Execution Version

AMENDED AND RESTATED

OPERATING AGREEMENT

OF

BRG HARRISON LOFTS URBAN RENEWAL, LLC

THE MEMBERSHIP INTERESTS OF THE MEMBERS ISSUED UNDER THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES ACT OF ANY STATE OR THE DISTRICT OF COLUMBIA IN RELIANCE ON EXEMPTIONS UNDER THOSE LAWS. NO RESALE OF A MEMBERSHIP INTEREST BY A MEMBER IS PERMITTED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT AND ANY APPLICABLE FEDERAL OR STATE SECURITIES LAWS, AND ANY VIOLATION OF SUCH PROVISIONS COULD EXPOSE THE SELLING MEMBER AND THE COMPANY TO LIABILITY.

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AMENDED AND RESTATED OPERATING AGREEMENT (the "**Agreement**") of **BRG HARRISON LOFTS URBAN RENEWAL, LLC** (the "**Company**"), made as of June 8, 2015 (the "**Effective Date**") by and between **ALBANESE HARRISON LOFTS LLC**, a New York limited liability company, having an office c/o Albanese Organization, Inc., 1050 Franklin Avenue, Garden City, New York 11530 (hereinafter sometimes referred to as "**Albanese**"), and **BRG LAMPWORKS VENTURES, LLC**, a New Jersey limited liability company, having an address at c/o Berkenkamp Realty Group LLC, 307 Frank E. Rodgers Boulevard South, First Floor, Harrison, New Jersey 07029 (hereinafter sometimes referred to as "**BRG**").

W I T N E S S E T H:

WHEREAS, the Company is a New Jersey limited liability company formed by the filing of a certificate of formation with the New Jersey Department of Revenue on December 9, 2011, which was subsequently amended and restated, approved by the New Jersey Department of Community Affairs on February 8, 2013 and then filed with the New Jersey Department of Treasury, Division of Revenue on February 28, 2013 (collectively, the "**Certificate of Formation**").

WHEREAS, the original members of the Company were Berkenkamp Realty Group LLC and Paragon Realty Group LLC (the "**Original Members**"), who are parties to an Operating Agreement of the Company dated October 1, 2013 (the "**Original Operating Agreement**").

WHEREAS, immediately prior to the execution and delivery of this Agreement, the Original Members transferred 100% of their Membership Interests in the Company to BRG.

WHEREAS, BRG desires to admit Albanese as a Member of the Company, and both parties desire to amend, restate and supersede the Original Operating Agreement in its entirety on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties agree as follows:

ARTICLE 1
DEFINED TERMS

Section 1.1 Definitions. All capitalized terms used in this Agreement that are not otherwise defined in the text of this Agreement shall have the meanings ascribed to said terms in the Glossary of Defined Terms attached hereto as Exhibit A. Other capitalized terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

Section 1.2 **General Interpretive Principles**. For purposes of this Agreement, except as otherwise provided or unless the context otherwise requires:

(a) the terms defined in Exhibit A or elsewhere in the text of this Agreement include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders;

(b) a reference to a "Section," "subparagraph" or "clause" without further reference to a document is a reference to a Section, subparagraph or clause of this Agreement;

(c) a reference to a subparagraph without further reference to a Section is a reference to such subparagraph as contained in the same Section in which the reference appears, and a reference to a clause without further reference to a subparagraph is a reference to such clause as contained in the same subparagraph in which the reference appears;

(d) a reference to an Exhibit or a Schedule without a further reference to the document to which the Exhibit or Schedule is attached is a reference to an Exhibit or Schedule to this Agreement;

(e) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and

(f) the word "including" means "including, but not limited to."

Section 1.3 **Interpretation**. The Members acknowledge that each Member and its respective counsel have participated in the drafting and revision of this Agreement and any Exhibits and/or Schedules hereto. Accordingly, the Members agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Agreement and any Exhibits and/or Schedules hereto.

ARTICLE 2
FORMATION AND NAME; OFFICE; PURPOSE; TERM; MEMBERS

Section 2.1 **Formation**. The Members hereby continue the organization of the Company as a limited liability company pursuant to the Act and the provisions of this Agreement. The Members will do all acts necessary to maintain the existence and good standing of the Company as a limited liability company under the laws of the State of New Jersey and all acts necessary to qualify the Company as a foreign limited liability company under the laws of, or the right otherwise to do business in, any state in which the Members determine it is necessary or desirable to have such qualification or right to do business.

Section 2.2 **Name of Company**. The name of the Company shall be "BRG Harrison Lofts Urban Renewal, LLC." The Company may do business under that name; *provided, however,* the Members agree that as soon as reasonably practicable after the Effective Date to file a certificate as required by the Act to conduct business under the alternate name "Harrison Lofts Urban Renewal,

LLC." The Members may agree from time to time to amend the Certificate of Formation to do business under any other name or names they designate. If the Company does business under a name other than that set forth in its Certificate of Formation or alternate name certificate, then the Company shall file an additional certificate to conduct business under such alternate name, as required by the Act.

Section 2.3 Purpose.

(a) The purposes of the Company are:

(i) to acquire from V.I.P. Realty Associates the real property and improvements thereon located in the Town of Harrison, County of Hudson, State of New Jersey, commonly known as 400 South Fifth Street, 420 South Fifth Street, 530 Bergen Street and the parking lot located at the southwest corner of Bergen Street and South Fifth Street, and designated as Lots 17 to 24 in Block 131, and Lots 1 through 36 in Block 156 on the Tax Map of the Township of Harrison (collectively, the "**Primary Property**") pursuant to the Acquisition Contract;

(ii) to acquire such additional parcels of real property in the Town of Harrison as the Managing Member deems necessary or appropriate for parking or otherwise to enhance the value or marketability of the Primary Property (such additional parcels, if any, together with the Primary Property, are referred to as the "**Property**");

(iii) in its capacity as designated redeveloper of the Property, to perform its obligations under the Redevelopment Agreement;

(iv) upon acquisition of the Property and in accordance with the terms of the Redevelopment Agreement, to redevelop and expand the existing warehouse buildings on the Property into an approximately 320-unit (or such other number of units approved by the applicable governmental authorities and the Managing Member) Class A residential rental community, and the construction of a parking deck containing approximately 263 spaces (or such other number of spaces approved by the applicable governmental authorities and the Managing Member) (collectively with the other improvements to be made to the Property, the "**Project**");

(v) to remediate, redevelop, renovate, improve, own, operate, manage, hold for investment, exchange, subdivide, encumber, maintain, finance, lease, market and/or sell the Property as improved;

(vi) to comply with the requirements of N.J.S.A. 40A:20-1 et seq. for as long as any payment in lieu of taxes agreement is in effect with the Town of Harrison; and

(vii) to engage in all activities reasonably necessary for, or incidental to, the acquisition, remediation, redevelopment, renovation, improvement, ownership, operation, management, holding for investment, exchanging, subdividing, encumbering, maintaining, financing, leasing, marketing, sale and other use of the Property.

The Company shall not engage in any activities, businesses or ventures other than as specifically authorized in this Section 2.3(a).

(b) The Company is hereby authorized to do all things and execute such agreements and documents which are necessary, in the opinion of the Managing Member, and not prohibited by this Agreement or any law, to accomplish the purposes of the Company, including without limitation, to resolve the Lawsuit.

Section 2.4 Principal Office; Registered Agent. The principal office of the Company shall be located at c/o Albanese Organization, Inc., 1050 Franklin Avenue, Garden City, New York 11530, or at any other location hereafter determined by the Managing Member. The Company will maintain a registered office at 307 Frank E. Rodgers Boulevard South, First Floor, Harrison, New Jersey 07029. The name of the Company's registered agent at such address is Thomas Berkenkamp.

Section 2.5 Term. The term of the Company commenced upon the filing of the Certificate of Formation with the Office of the New Jersey Department of Treasury, Division of Revenue and shall continue until its existence is terminated pursuant to Article 7 of this Agreement.

Section 2.6 Members. The name, present mailing address, Initial Capital Contribution, Enhanced Value Contribution and Percentage of each Member is set forth on Exhibit B.

Section 2.7 Additional Members. Except as herein provided to the contrary, a person may only be admitted as a member of the Company upon the written consent of the Members in accordance with Article 5 of this Agreement.

Section 2.8 Representations and Warranties of the Members. Except for the representations and warranties in subparagraphs (l), (m), (o) and (p) of this Section which are made only by the Member referenced therein, each Member represents, warrants, covenants, acknowledges and agrees that:

(a) The Member is a limited liability company duly organized or formed and validly existing in good standing under the laws of the state of its organization or formation; the Member has the requisite power and authority to enter into this Agreement, to acquire and hold its Membership Interest and to perform its obligations hereunder; the Member's execution, delivery and performance of this Agreement has been duly authorized; and the Member has obtained any consent, approval, authorization or order of any court or governmental agency or body required for its execution, delivery and performance of this Agreement.

(b) This Agreement and all agreements, instruments and documents herein provided to be executed or caused to be executed by it contemporaneously herewith are duly authorized, executed and delivered by and, assuming due execution and delivery by the other Member, will be binding and enforceable against the Member.

(c) The Member's execution, delivery, and performance of this Agreement will not (i) conflict with, result in a breach of or constitute a default (or any event that, with notice or

lapse of time, or both, would constitute a default) or result in the acceleration of any obligation under, any other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets are subject, (ii) conflict with or violate any of the provisions of its organizational documents or (iii) violate any statute or any order, rule or regulation of any court or governmental or regulatory agency, body or officials.

(d) There is no action, suit or proceeding pending or, to its knowledge, threatened against it in any court or by or before any other governmental agency or instrumentality that would prohibit such Member's entry into or materially impair such Member's ability to perform its obligations under this Agreement.

(e) The Member has consulted with its own attorneys, accountants and financial advisors regarding all legal, tax and financial matters concerning an investment in the Company and the tax consequences of participating in the Company; it acknowledges that the tax consequences of its investment in the Company will depend on its particular circumstances, and none of the Company, the Members, the Authorized Representatives or the partners, shareholders, members, managers, fiduciaries, agents, officers, directors, employees, Affiliates or consultants of any of them will be responsible or liable for the legal, tax or financial consequences to it of an investment in the Company; it will look solely to, and rely upon, its own advisers with respect to the legal, tax and financial consequences of this investment; it has been advised to and has engaged its own counsel (whether in-house or external) and any other advisers it deems necessary and appropriate; by reason of its business or financial experience, or by reason of the business or financial experience of its own attorneys, accountants and financial advisors (which advisors, attorneys and accountants are not Affiliates of the Company or any other Member), it is capable of evaluating the risks and merits of an investment in the Company and of protecting its own interests in connection with this investment; and, nothing in this Agreement should or may be construed to allow any Member to rely upon the advice of counsel acting for another Member or to create an attorney-client relationship between a Member and counsel for another Member.

(f) The Member is acquiring the Membership Interest for investment purposes for its own account only and not with a view to, or for sale in connection with, any distribution of all or any part of the Membership Interest; it is financially able to bear the economic risk of its investment in its Membership Interest, including the total loss thereof; no Person has at any time expressly or impliedly represented, guaranteed or warranted to it that it may freely transfer its Membership Interest, that a percentage of profit and/or amount or type of consideration will be realized as a result of its investment in its Membership Interest, that past performance or experience on the part of the Members in the Company or their respective Affiliates in any way indicates the future results of the ownership of its Membership Interest or of the overall Company business, that any cash distributions from Company operations or otherwise will be made by any specific date or will be made at all, or that any specific tax benefits will accrue as a result of an investment in the Company; and, it acknowledges that there are substantial restrictions on the transferability of its Membership Interest pursuant to this Agreement, that there is no public market for its Membership Interest and none is expected to develop, and that, accordingly, it may not be possible for it to liquidate its investment in the Company.

(g) The Member acknowledges that its investment in the Membership Interest is speculative, involves a substantial risk of loss of its entire investment in the Company, that it understands and takes full cognizance of the risk factors related to purchase of the Membership Interest, including that the other Members may (and will be permitted to) advance and seek to protect their own individual interests when making decisions or exercising rights relating to the Company and not necessarily the interests of the Company or another Member.

(h) (i) Each Person owning a ten percent (10%) or greater interest in such Member (A) is not currently identified on the List and (B) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or executive order of the President of the United States, and (ii) such Member has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. This subparagraph (h) shall not apply to any Person to the extent that such Person's interest in the Member is through either (A) a Person (other than an individual) whose securities are listed on a national securities exchange, or quoted on an automated quotation system, in the United States, or a wholly-owned subsidiary of such a Person or (B) an "employee pension benefit plan" or "pension plan" as defined in Section 3(2) of ERISA.

(i) The Member shall comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect and shall immediately notify the other Members in writing if it becomes aware that any of the foregoing representations, warranties or covenants are no longer true or have been breached or if the Member has a reasonable basis to believe that they may no longer be true or have been breached.

(j) No broker has represented it (or any of its Affiliates) in connection with the transactions contemplated herein or otherwise in respect of a potential transaction in respect of the Property, other than Marcus & Millichap which the Company agrees to compensate pursuant to separate agreement, a copy of which has been provided to each Member.

(k) The Member is a United States person within the meaning of Section 7701(a)(30) of the Code.

(l) With respect to the Albanese Member only, the Albanese Member is controlled, directly or indirectly, by Russell C. Albanese and Christopher V. Albanese and a true, accurate and complete copy of its organizational chart, which also sets forth the ultimate beneficial owners of the Albanese Member, is attached hereto as Exhibit C.

(m) With respect to the BRG Member only, the BRG Member is controlled, directly or indirectly, by Thomas A. Berkenkamp and a true, accurate and complete copy of its organizational chart, which also sets forth the ultimate beneficial owners of the BRG Member, is attached hereto as Exhibit D.

(n) Each Member has the liquidity and financial capability to make the Capital Contributions and Preferred Capital Loans for which such Member is responsible pursuant to the

terms of this Agreement, including without limitation, the Initial Capital Contributions specified in Exhibit B.

(o) With respect to the BRG Member only, the BRG Member represents and warrants that (i) the Company has no liabilities which, individually or in the aggregate, exceed $10,000, and no contracts, leases or agreements relating to the Property or otherwise, other than (A) payables incurred in connection with the Project, a true, correct and complete list of which as of the Effective Date is contained in Exhibit G and (B) contractual obligations listed on Exhibit G, and true, correct and complete copies of such obligations which are in writing (including all amendments thereto) as of the Effective Date have been provided to the Albanese Member, (ii) other than the Lawsuit (which has been settled pursuant to that certain Settlement Agreement and Release, dated as of June 5, 2015 (the "**Settlement Agreement**"), a true, correct and complete copy of which as of the Effective Date has been provided to the Albanese Member), there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending or filed or, to the knowledge of the BRG Member, threatened relating the Company which could be reasonably expected to adversely affect the Property or the Company in any material respect, (iii) the Company has no employees, (iv) the Company has filed all tax returns and paid all taxes required to be filed and paid by the Company pursuant to any applicable federal, state or municipal statute, regulation or executive order binding upon the Company or any of its assets and (v) no attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or threatened in writing against the Company or any of its assets.

(p) With respect to the BRG Member only, the BRG Member represents and warrants that the admission of the Albanese Member as a Member of the Company pursuant to this Agreement will not conflict with, result in a breach of or constitute a default (or any event that, with notice or lapse of time, or both, would constitute a default) or result in the acceleration of any obligation under, any other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of Company's property or assets are subject.

Section 2.9 Indemnification. If and to the extent any representation and warranty of a Member contained in Section 2.8 proves to have been false, inaccurate or misleading in any material respect when made, such Member shall and does hereby indemnify, defend and hold harmless the other Member (the "**Indemnified Member**") from and against all losses, damages, liabilities, costs and expenses, including without limitation, reasonable attorneys' fees and costs incurred or sustained by the Indemnified Member as a result thereof.

ARTICLE 3
CAPITAL; CAPITAL ACCOUNTS

Section 3.1 Initial Capital Contributions.

(a) On or prior to the Effective Date, the BRG Member has made Capital Contributions to the Company from time to time to fund Predevelopment Costs in the aggregate amount of $2,336,667 (collectively, the "**Pre-Effective Date Contribution**"), which have been

substantiated to the satisfaction of the Albanese Member and which shall constitute the BRG Member's Initial Capital Contribution for purposes of this Agreement. Contemporaneously herewith, the Albanese Member is making an Initial Capital Contribution in the amount of $4,666,666.50 (the "**Effective Date Contribution**"), representing fifty percent (50%) of the total Initial Capital Contribution the Albanese Member is required to make.

(b) After the Effective Date, from time to time following receipt of an Initial Capital Call Notice issued by the Managing Member, the Albanese Member shall make Initial Capital Contributions as and when needed by the Company to fund its operations in accordance with Section 2.3. If and to the extent that the aggregate Initial Capital Contribution made by the Albanese Member under this subparagraph (b) plus the Effective Date Contribution made by the Albanese Member is less than $9,333,333, then on the date of closing of the Construction Loan the Albanese Member shall contribute cash to the Company which will result in the aggregate Initial Capital Contribution of the Albanese Member equaling $9,333,333. At such time as the aggregate Initial Capital Contribution of the Albanese Member equals $9,333,333, the obligations of the Albanese Member under this subparagraph (b) shall cease. The Albanese Member is personally obligated to make the Initial Capital Contribution pursuant to this Section 3.1(b). If the Albanese Member fails to fund its Initial Capital Contribution in full pursuant to this Section 3.1(b), (i) then notwithstanding any provision to the contrary contained in this Agreement and without any obligation of the BRG Member to send a Default Notice, the rights of the Albanese Member to participate as a member in the management and conduct of the Company's activities shall terminate (including all voting rights theretofore associated with its Membership Interest and the right to vote on or approve any Major Decision other than the Select Major Decisions (as to which the Albanese Member shall retain its approval rights)) unless and until the Albanese Member effects a Cure and (ii) the Company and the Non-Defaulting Members may pursue such remedies available at law or in equity, in addition to the remedies provided in this Section 3.1 and Section 3.3.

(c) Any call for Initial Capital Contributions to be made pursuant to subparagraph (b) above shall be made by delivery to the Albanese Member of prior written notice (the "**Initial Capital Call Notice**") setting forth: (i) the total amount of the Initial Capital Contribution requested, (ii) the reason the Initial Capital Contribution is requested and (iii) the date the Albanese Member's Initial Capital Contribution is due and payable (the "**Initial Capital Due Date**"), which shall be no earlier than five (5) business days after the date that the Initial Capital Call Notice has been given. For the avoidance of doubt, at any time more than one Member is serving as Managing Member, any Member serving in such capacity may issue an Initial Capital Call Notice pursuant to Section 3.1(b) as and when the Company requires capital.

(d) In the event of the occurrence of a Default due to the Albanese Member's failure to contribute a portion of its Initial Capital Contribution pursuant to Section 3.1(b), and the failure of the Albanese Member to Cure the Default, and if the BRG Member does not contribute the Defaulted Amount to the Company, the Percentage in the Company of each Member shall be recalculated as of the Initial Capital Due Date, as follows: (1) the Percentage of the Albanese Member shall be reduced to a percentage determined in accordance with the Non-Punitive Dilution Methodology and (2) the Percentage of the BRG Member shall be increased by an amount equal to

the reduction in the Percentage of the Albanese Member calculated in accordance with clause (1). Solely for purposes of illustration, Exhibit I contains an example of how the Percentages would be recalculated pursuant to this Section 3.1(d). If the BRG Member contributes the Defaulted Amount to the Company within thirty (30) days after the Initial Capital Due Date, the Percentage in the Company of each Member shall be recalculated in accordance with Section 3.3(b)(ii).

(e) The right of the Managing Member to call for Initial Capital Contributions as herein provided shall not create or be deemed to create in any third party any right whatsoever to require the Members to contribute capital to the Company.

Section 3.2 Additional Capital Contributions.

(a) After each Member has fully funded its Initial Capital Contribution in the amount set forth on Exhibit B in the column designated "Initial Capital Contribution" opposite such Member's name (or its predecessor in interest), and the Albanese Member has made all Preferred Capital Loans which it is obligated to fund under Section 3.9 (the foregoing being collectively referred to as the "**Call Conditions**") and (i) the Managing Member determines in its judgment, at any time or from time to time, that an Additional Capital Contribution is needed by the Company to pay any liabilities, costs, expenses and fees of the Company, and if the need for funding arises subsequent to the Stabilization Date, the Non-Managing Member approves of the same to the extent required pursuant to Section 5.3(b)(iv) or (ii) any Member determines that an Additional Capital Contribution is required to fund Additional Project Costs and/or Non-Discretionary Expenses, then the Requesting Member may request that all Members contribute Additional Capital Contributions in cash to fund such needs, by giving an Additional Capital Call Notice to the Members in accordance with the provisions of Section 3.2(b). Each Member's share of an Additional Capital Contribution shall be equal to the product obtained by multiplying the Additional Contribution Ratio of the Member by the total Additional Capital Contribution requested; *provided, however,* within five (5) business days after receipt of the Additional Capital Call Notice, the BRG Member shall have the right upon written notice to the Managing Member to increase its share of the Additional Capital Contribution to an amount up to the product obtained by multiplying the Percentage of the BRG Member by the total Additional Capital Contribution requested, in which event the Albanese Member's share of the Additional Capital Contribution shall be reduced by the amount of such increase. Each Member shall be personally obligated to make a Required Additional Capital Contribution pursuant to this Section 3.2(a); *provided, however*, in no event shall the BRG Member be responsible to fund an aggregate Required Additional Capital Contribution in excess of $2,000,000 (the "**BRG ACC Cap**") and in no event shall the Albanese Member be responsible to fund an aggregate Required Additional Capital Contribution in excess of $4,000,000 (the "**Albanese ACC Cap**"); and, *provided, further,* if a Member fails to fund its Required Additional Capital Contribution in full pursuant to this Section 3.2(a), the Company and the Non-Defaulting Members may pursue such remedies available at law or in equity, in addition to the remedies provided in Section 3.3. Notwithstanding any provision in this Agreement to the contrary, no Member shall be personally obligated to make a Discretionary Additional Capital Contribution pursuant to this Section 3.2(a), and the remedies of the Company and the Non-Defaulting Members for the failure of

any Member to make a Discretionary Additional Capital Contribution pursuant to this Section 3.2(a) shall be limited as provided in Section 3.3.

(b) Any call for Additional Capital Contributions to be made pursuant to subparagraph (a) above shall be made by delivery to the Members of not less than ten (10) business days prior written notice (the "**Additional Capital Call Notice**") setting forth: (i) the total amount of the Additional Capital Contribution requested, none of which individually shall exceed $3 million unless required to fund Non-Discretionary Expenses or required by the lender making the Construction Loan, (ii) the reason the Additional Capital Contribution is requested, (iii) each Member's proportionate share of the total Additional Capital Contribution as determined pursuant to subparagraph (a) above and (iv) the date each Member's Additional Capital Contribution is due and payable (the "**Additional Capital Due Date**"), which shall be no earlier than ten (10) business days after the date that the Additional Capital Call Notice has been given.

(c) Notwithstanding any provision to the contrary contained in this Section 3.2 and provided that the requirements of Section 5.7(c) have been satisfied with respect to any Additional Capital Contributions requested to be contributed by the Members after the closing of the Construction Loan: (i) the Waived Amount of a Member shall be applied to reduce an equal amount of any Additional Capital Contributions requested to be made by such Member pursuant to this Section (including such Member's obligation under this Agreement to make a Required Additional Capital Contribution if any such reduction is applied to reduce a Required Additional Capital Contribution) and (ii) for all other purposes of this Agreement, such Member shall be treated as having contributed a Required Additional Capital Contribution to the extent the Waived Amount is applied to reduce a Required Additional Capital Contribution or a Discretionary Additional Capital Contribution to the extent the Waived Amount is applied to reduce a Discretionary Additional Capital Contribution.

(d) The right of the Requesting Member to call for Additional Capital Contributions as herein provided shall not create or be deemed to create in any third party any right whatsoever to require the Members to contribute capital to the Company.

Section 3.3 Default.

(a) **Default Notice**. If any Member (a "**Defaulting Member**") fails to pay on or before the Due Date therefor any portion of its Initial Capital Contribution or any Additional Capital Contribution requested in accordance with Section 3.1 or Section 3.2 (the "**Defaulted Amount**"), such failure shall be deemed a default ("**Default**") hereunder, the Requesting Member shall send a default notice in writing to the Defaulting Member (the "**Default Notice**") and the Members (the "**Non-Defaulting Members**") who have paid to the Company the Initial Capital Contribution or Additional Capital Contribution requested of them pursuant to Section 3.1 or Section 3.2, as applicable, shall have the rights described in this Section.

(b) **Recalculation of Economic Interests**.

(i) In the event of the occurrence of a Default, and the failure of a Defaulting Member to Cure the Default, the Requesting Member may elect to either (A) give the Non-Defaulting Members the right to participate in the contribution of the Defaulted Amount to the Company as hereinafter provided or (B) request a Contribution Loan from the Non-Defaulting Members with respect to the Default as provided in Section 3.3(c). If the Requesting Member elects to give the Non-Defaulting Members the right to participate in the contribution of the Defaulted Amount to the Company as hereinabove provided, the Requesting Member shall give written notice thereof to the Defaulting Member and the Non-Defaulting Members (the "**Participation Notice**"), and the Non-Defaulting Members shall have the right to participate in the contribution of the Defaulted Amount to the Company, *pro rata*, in accordance with their respective Percentages or in such other proportion as the participating Non-Defaulting Members shall agree. Within thirty (30) days after the giving of the Participation Notice, each Non-Defaulting Member electing to participate in the contribution of the Defaulted Amount to the Company, shall deliver written notice to that effect to the Requesting Member specifying the amount the Non-Defaulting Member elects to so contribute. Any Non-Defaulting Member who within said 30-day period fails to deliver said notice to the Requesting Member or fails to deliver to the Company in immediately available federal funds the amount such Non-Defaulting Member elected to so contribute, shall not have the right to participate as herein provided without the consent of the Requesting Member. If one or more of the Non-Defaulting Members contribute the Defaulted Amount in full to the Company within thirty (30) days after the giving of the Participation Notice, the Economic Interests of the Members shall be recalculated in accordance with the applicable provisions of subparagraph (b)(ii) or (b)(iii) of this Section. If the Non-Defaulting Members do not contribute the Defaulted Amount in full to the Company within thirty (30) days after the giving of the Participation Notice or if the Requesting Member fails to deliver the Participation Notice as hereinabove provided within forty-five (45) days after the Default Notice is given to the Defaulting Member, the Economic Interests of the Members shall not be recalculated with respect to the Default as provided in subparagraphs (b)(ii) and (b)(iii) of this Section and (A) the Company shall return all or any portion of any Initial Capital Contributions or Additional Capital Contributions, as applicable, relating to the most recent Call Notice, which was advanced to the Company by a Non-Defaulting Member at the request of the Non-Defaulting Member (including any amount contributed by the Non-Defaulting Member on account of the Defaulted Amount) and (B) the Requesting Member shall be limited to the right to request a Contribution Loan with respect to the Default as provided in Section 3.3(c) (and any amount contributed by a Non-Defaulting Member on account of the Defaulted Amount that is not returned to the Non-Defaulting Member, shall be treated as a Contribution Loan). The Defaulting Member hereby irrevocably appoints the Requesting Member, its attorney-in-fact, coupled with an interest, to execute all documents or amendments to this Agreement necessary or appropriate to effectuate the provisions of this Section, including, but not limited to, the amendment of Exhibit B hereof to reflect the recalculation of the Economic Interest of each of the Members pursuant to this subparagraph (b).

(ii) To the extent the Defaulted Amount is attributable to the failure of the Defaulting Member to contribute its pro rata share of an Initial Capital Contribution or a Required

Additional Capital Contribution and if one or more of the Non-Defaulting Members contribute such Defaulted Amount in full to the Company within thirty (30) days after the giving of the Participation Notice as provided in subparagraph (b)(i) of this Section, the Economic Interest in the Company of each Member shall be automatically recalculated as of the Due Date as follows: (1) the Capital Account in the Company of each Member as of the Due Date shall be adjusted as follows: (A) the Capital Account of the Defaulting Member shall be reduced (not below zero) by an amount equal to 100% of the Defaulted Amount, and (B) the Capital Accounts of the Non-Defaulting Member(s) who have contributed the Defaulted Amount to the Company shall be increased, *pro rata*, in accordance with the portion of the Defaulted Amount contributed by each of them, by an aggregate amount equal to the reduction in the Capital Account of the Defaulting Member in subclause (A) of this clause (1); (2) the Percentage in the Company of each Member shall be recalculated as follows: (A) the Percentage of the Defaulting Member shall be reduced (not below zero) to a percentage determined in accordance with the Punitive Dilution Methodology and (B) the Percentage(s) of the Non-Defaulting Member(s) who have contributed the Defaulted Amount to the Company shall be increased, *pro rata*, in accordance with the portion of the Defaulted Amount contributed by each of them, by an aggregate amount equal to the reduction in the Percentage of the Defaulting Member in subclause (A) of this clause (2); and (3) the Undistributed Amounts of each Member as of the Due Date shall be adjusted as follows: (A) the Undistributed Required Additional Capital and thereafter (if and to the extent the Defaulting Member's Undistributed Required Additional Capital is less than the Defaulted Amount) the Undistributed Initial Capital (collectively, the "**Undistributed Amounts**") of the Defaulting Member shall be reduced by an aggregate amount equal to the Defaulted Amount, and (B) each of the Undistributed Amounts of the Non-Defaulting Member(s) who have contributed the Defaulted Amount to the Company shall be increased (and deemed made by such Non-Defaulting Member), *pro rata*, in accordance with the portion of the Defaulted Amount contributed by each of them, to take into account any reduction in each of the Undistributed Amounts of the Defaulting Member in subclause (A) of this clause (3). For the avoidance of doubt, the adjustment of the Capital Account of each Member in accordance with clause (1) of this subparagraph (b)(ii) is only intended to reflect the Shifting of Capital described above in this subparagraph (b)(ii) and is not intended to reflect any increases in the Capital Accounts of the Members resulting from Capital Contributions made by them. Solely for purposes of illustration, Exhibit I contains an example of how the Percentages and the Undistributed Amounts would be recalculated pursuant to this Section 3.3(b)(ii).

(iii) To the extent the Defaulted Amount is attributable to the failure of the Defaulting Member to contribute its pro rata share of a Discretionary Additional Capital Contribution and if one or more of the Non-Defaulting Members contribute such Defaulted Amount in full to the Company within thirty (30) days after the giving of the Participation Notice as provided in subparagraph (b)(i) of this Section, the Percentage in the Company of each Member shall be recalculated as of the Additional Capital Due Date as follows: (1) the Percentage of the Defaulting Member shall be reduced to a percentage determined in accordance with the Non-Punitive Dilution Methodology and (2) the Percentage(s) of the Non-Defaulting Member(s) who have contributed the Defaulted Amount to the Company shall be increased, *pro rata*, in accordance with the portion of the Defaulted Amount contributed by each of them, by an aggregate amount equal to the reduction in the Percentage of the Defaulting Member in clause (1). Solely for purposes of illustration, Exhibit I

contains an example of how the Percentages would be recalculated pursuant to this Section 3.3(b)(iii).

(iv) For purposes of the recalculation of the Economic Interests in the Company of the Members pursuant to the provisions of subparagraph (b)(ii) of this Section, the Capital Account of each Member shall first be adjusted as follows: (1) each Member's Capital Account shall be credited with the portion of the Initial Capital Contribution or Additional Capital Contribution (as applicable) and the Defaulted Amount contributed by such Member in accordance with Sections 3.1 or 3.2 and Section 3.3(b)(i) and (2) each Member's Capital Account balance shall be deemed to be tentatively increased by (A) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain determined as of the end of the Company Accounting Year ending immediately prior to the Due Date and (B) any amounts that such Member is obligated to restore or is deemed obligated to restore to the Company pursuant to Regulation Sections 1.704-1(b)(2)(ii)(b)(3) and 1.704-1(b)(2)(ii)(c) as of the end of the Company Accounting Year ending immediately prior to the Due Date. After the recalculation of the Economic Interests in the Company, the tentative increase in each Member's Capital Account balance described in clause (2) above shall be reversed. The recalculation of the Economic Interests in the Company of the Members provided for in subparagraphs (b)(ii) and (b)(iii) of this Section shall be made in addition to the adjustments to the Capital Accounts of the Non-Defaulting Members made on account of the contribution to the Company by the Non-Defaulting Members of the Initial Capital Contributions or Additional Capital Contributions and the Defaulted Amount paid in accordance with Sections 3.1 or 3.2 and Section 3.3(b)(i).

(v) For all purposes of this Agreement, the Defaulted Amount contributed by a Non-Defaulting Member shall be treated as (A) an Initial Capital Contribution to the extent the Defaulted Amount is attributable to the failure of the Defaulting Member to contribute its pro rata share of an Initial Capital Contribution, (B) a Required Additional Capital Contribution to the extent the Defaulted Amount is attributable to the failure of the Defaulting Member to contribute its pro rata share of a Required Additional Capital Contribution and (C) a Discretionary Additional Capital Contribution to the extent the Defaulted Amount is attributable to the failure of the Defaulting Member to contribute its pro rata share of a Discretionary Additional Capital Contribution.

(c) **Contribution Loan**. If pursuant to the provisions of subparagraph (b)(i) of this Section either (i) the Requesting Member elects to request a Contribution Loan from the Non-Defaulting Members with respect to the Default, (ii) the Non-Defaulting Members do not contribute the Defaulted Amount in full to the Company within thirty (30) days after the giving of the Participation Notice or (iii) the Requesting Member fails to deliver the Participation Notice within forty-five (45) days after the Default Notice is given to the Defaulting Member, the Requesting Member may request upon notice to the Defaulting Member and the Non-Defaulting Members that the Non-Defaulting Members advance a contribution loan ("**Contribution Loan**") to the Company up to the Defaulted Amount, on behalf of the Defaulting Member, *pro rata* in accordance with their respective Percentages, or in such other proportion as they shall agree; *provided*, *however*, the Non-Defaulting Members shall have no obligation to make a Contribution Loan to the Company; and, *provided*, *further*, the Requesting Member may require in the notice to the Non-Defaulting Members

that any Non-Defaulting Member who desires to participate in making the Contribution Loan, advance the amount requested within the time period specified in such notice. The Contribution Loan shall be treated as a loan from the Non-Defaulting Members to the Defaulting Member and the amount of the Contribution Loan shall be deemed contributed to the Company by the Defaulting Member as an Initial Capital Contribution, a Required Additional Capital Contribution or a Discretionary Additional Capital Contribution, as applicable, and credited to the Capital Account of the Defaulting Member. Any distributions payable to the Defaulting Member in accordance with Article 4 of this Agreement shall be first paid to the Non-Defaulting Members in payment of the accrued interest and unpaid principal due with respect to the Contribution Loan, and the amount so paid to the Non-Defaulting Members shall reduce the Undistributed Amounts and the Capital Account of the Defaulting Member in the same manner as if such amount was distributed to the Defaulting Member. Contribution Loans shall bear interest at a rate per annum equal to the lesser of: (i) fifteen percent (15%) per annum or (ii) the maximum rate of interest then permitted by applicable law. Contribution Loans, together with all accrued interest thereon, shall be payable to the Non-Defaulting Members from distributions as and when payable to the Defaulting Member in accordance with Article 4 of this Agreement and shall be due and payable in full to the Non-Defaulting Members upon the earliest to occur of (1) the sale or refinancing of all or substantially all of the Property, (2) the Transfer by either the maker or borrower of the Contribution Loan of fifty percent (50%) or more of its Membership Interest, or (3) three (3) years after the date the Contribution Loan is made, although the Contribution Loan may be prepaid in whole or in part at any time without penalty. The Non-Defaulting Members who have advanced the Contribution Loan shall have a security interest in the Economic Interest of the Defaulting Member and shall have all the rights available to a secured party under the Uniform Commercial Code ("**UCC**") as in effect in the applicable jurisdiction. The Defaulting Member hereby irrevocably appoints the Requesting Member, its attorney-in-fact, coupled with an interest, to execute (if necessary) and file any and all financing statements required under the UCC containing a collateral description in the form attached as Exhibit H to perfect the security interest of the Non-Defaulting Members in the Economic Interest of the Defaulting Member.

(d) **Loss of Management Rights**. In addition to the other rights and remedies available under this Agreement, if a Defaulting Member fails to Cure the Default, the rights of the Defaulting Member to participate as a member in the management and conduct of the Company's activities shall terminate, including all voting rights theretofore associated with its Membership Interest and the right to vote on or approve any Major Decision other than the Select Major Decisions (as to which a Defaulting Member shall retain its approval rights); *provided, however*, the aforesaid management rights of the Defaulting Member shall not terminate if, on the date of such Default, no outstanding Contribution Loan is due by the Defaulting Member and the aggregate reduction in the Percentage of the Defaulting Member based on such Default and any prior Defaults pursuant to the provisions of subparagraphs (b)(ii) and (b)(iii) of this Section is less than 25% of the amount of the Percentage of the Defaulting Member on the Effective Date; and, *provided, further*, if the aggregate reduction in Percentage of the Defaulting Member, if any, pursuant to the provisions of subparagraphs (b)(ii) and (b)(iii) of this Section due to one or more Defaults of the Defaulting Member is not 25% or more of the amount of the Percentage of the Defaulting Member on the Effective Date and the Defaulting Member shall pay to the Non-Defaulting Member all principal and

interest of any Contribution Loan then due by the Defaulting Member, the aforesaid management rights of the Defaulting Member shall be restored as of the date of such payment. Notwithstanding the termination of the management rights of a Defaulting Member pursuant to his subparagraph, the Defaulting Member shall retain (i) the rights to its Economic Interest, (ii) the right to inspect the Company's books and records at the principal office of the Company at reasonable times and upon reasonable prior notice to the Managing Member, (iii) its rights under Section 5.10, provided that the deadlock involves a Select Major Decision, (iv) its rights under Section 5.11 and (v) the right to receive reports as provided in Section 8.4 of this Agreement.

(e) **Remedies**. Each Member is personally obligated to make an Initial Capital Contribution in the amount set forth on Exhibit B in the column designated "Initial Capital Contribution" opposite such Member's name (or its predecessor in interest) and a Required Additional Capital Contribution up to such Member's ACC Cap, and if a Member fails to fund its Initial Capital Contribution and Required Additional Capital Contribution in full, the Company and the Non-Defaulting Members may pursue such remedies available at law or in equity, in addition to the remedies provided in Section 3.1 or this Section 3.3. No Member shall have any personal liability to the Company, any other Member or any other Person with respect to the failure to contribute a Discretionary Additional Capital Contribution and the remedies contained in this Section 3.3 shall be the sole remedies for the occurrence of a Default due to the failure of a Member to make a Discretionary Additional Capital Contribution.

Section 3.4 No Interest on Capital Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to receive any interest on its Capital Contributions.

Section 3.5 Return of Capital Contributions. Except as otherwise provided in this Agreement, no Member shall have the right to receive any return of any Capital Contribution.

Section 3.6 Form of Return of Capital. If a Member is entitled to receive a return of a Capital Contribution, the Member shall not have the right to receive anything other than cash in return of the Capital Contribution of the Member.

Section 3.7 Capital Accounts. A separate Capital Account shall be maintained for each Member. Upon the purchase of the Property by the Company, the Members acknowledge that the Capital Accounts of the Members shall be credited with the amount set forth on Exhibit B in the column designated "Enhanced Value Contribution" opposite such Member's name (or its predecessor in interest), which reflects the revaluation of the Capital Accounts of the Members in accordance with the provisions of Section 4.8(c). The Capital Accounts of the Members shall not be credited with the Enhanced Value Contribution unless and until the Property is purchased by the Company.

Section 3.8 Member Loans.

(a) If the Call Conditions have been satisfied and the Managing Member, at any time or from time to time after the closing of the Construction Loan, determines in its judgment that

funds are needed by the Company or any Subsidiary Entity, to pay any liabilities, costs, expenses or fees of the Company in accordance with the Budget, and the proceeds of any construction financing or other third party financing are insufficient or unavailable therefor, the Managing Member may request by written notice to the Members that the Members advance a loan to the Company in cash to fund such needs, *pro rata* in accordance with their respective Percentages, or in such other proportion as they shall agree; *provided, however*, the Members shall have no obligation to make Member Loans pursuant to this Section; and, *provided, further*, the Managing Member may require in the notice to the Members that any Member who desires to participate in making the Member Loan, advance the amount requested within the time period specified in such notice which in no event shall be less than ten (10) business days. Any Affiliate of a Member may advance on behalf of such Member, any loan requested under this Section.

(b) Any amounts advanced to the Company under this Section (herein referred to collectively as "**Member Loans**") by one or more Members (or their respective Affiliates) (herein referred to collectively as "**Lending Members**") shall bear interest from the date of each advance at a rate per annum equal to the lesser of: (i) fifteen percent (15%) per annum or (ii) the maximum rate of interest then permitted by applicable law. The amount of any Member Loans, and interest thereon, shall be an obligation of indebtedness from the Company to the Lending Members for which no Member shall have personal liability and shall, in all events, be repaid to the Lending Members prior to any distributions to the Members pursuant to Article 4 of this Agreement (other than any payments to the Albanese Member in repayment of any Preferred Capital Loans, and accrued and unpaid interest thereon, pursuant to Section 4.1(a)).

(c) Notwithstanding any provision of subparagraph (b) of this Section to the contrary, any one or more Members (or their respective Affiliates) may, at any time, make a Member Loan to the Company on any other terms approved by the Members in accordance with the provisions of Section 5.3(a)(vii) hereof.

Section 3.9 Preferred Capital Loans.

(a) If the Construction Loan obtained by the Company is less than $65,000,000 and mezzanine and/or preferred equity financing is not available from a third party lender at an Effective Interest Rate equal to or less than sixteen percent (16%) per annum, the Albanese Member shall advance a loan to the Company in cash in an amount equal to the lesser of (i) the amount by which the Construction Loan is less than $65,000,000 or (ii) $9,333,333. The Albanese Member will advance any required Preferred Capital Loans, from time to time, as the same is needed to pay any liabilities, costs, expenses or fees of the Company.

(b) Any amounts advanced to the Company under this Section (herein referred to collectively as "**Preferred Capital Loans**") by the Albanese Member (or its respective Affiliates) shall bear an Effective Interest Rate from the date of each advance at a rate per annum equal to the lesser of: (i) twelve percent (12%) per annum or (ii) the maximum rate of interest then permitted by applicable law. The amount of any Preferred Capital Loans, and interest thereon, shall be an obligation of indebtedness from the Company to the Albanese Member for which no Member shall

have personal liability and shall, in all events, be repaid to the Albanese Member prior to any distributions to the Members pursuant to Article 4 of this Agreement (or payments to any Lending Members on account of Member Loans).

(c) For purposes of this Section, the term "**Effective Interest Rate**" means the total cost of borrowing per annum expressed as a percentage of the actual principal amount advanced by the lender based upon the interest payable to the lender per year and a pro rata portion of all lender fees payable to the lender per year amortized over the term of the loan, including without limitation, origination fees, exit fees, application fees and lender legal fees.

(d) The obligation of the Albanese Member to advance any Preferred Capital Loans as herein provided shall not create or be deemed to create in any third party any right whatsoever to require the Albanese Member to advance a loan to the Company.

ARTICLE 4
PROFIT, GAIN, LOSS AND DISTRIBUTIONS

Section 4.1 **Net Available Cash, Net Mortgage Proceeds and Capital Receipts**. The Managing Member shall, (i) at the end of each calendar quarter during a Company Accounting Year, determine the amount of Net Available Cash, if any, with respect to such calendar quarter and apply or distribute, as applicable, Net Available Cash as set forth below within thirty (30) days after the end of such calendar quarter, and (ii) upon the occurrence of any event giving rise to Net Mortgage Proceeds or Capital Receipts, determine the amount of Net Mortgage Proceeds and Capital Receipts, if any, and, apply or distribute, as applicable, Net Mortgage Proceeds and Capital Receipts as set forth below within thirty (30) days after receipt thereof by the Company, in each case, subject to the terms of Section 4.3, in the following order of priority:

(a) First, payments shall be made to the Albanese Member for any accrued and unpaid interest on, and for the unpaid principal balance of, any Preferred Capital Loans;

(b) Next, payments shall be made to any Lending Members for any accrued and unpaid interest on, and for the unpaid principal balance of, any Member Loans (Member Loans which have been outstanding the shortest shall be repaid first, and if two or more Lending Members have Member Loans which have been outstanding for equal periods, repayment of such Member Loans shall be made *pro rata* in proportion to the then respective loan balances of such Member Loans, with payments first repaying accrued but unpaid interest and then repaying principal);

(c) Next, distributions shall be made to the Members, *pro rata* in proportion to the respective Undistributed Discretionary Additional Capital Return of each Member, until each Member has received distributions pursuant to this subparagraph (c) in an amount equal to such Member's Undistributed Discretionary Additional Capital Return;

(d) Next, distributions shall be made to the Members, *pro rata* in proportion to the respective Undistributed Discretionary Additional Capital of each Member, until each Member

has received distributions pursuant to this subparagraph (d) in an amount equal to such Member's Undistributed Discretionary Additional Capital;

(e) Next, distributions shall be made to the Members, *pro rata* in proportion to the respective Undistributed Enhanced Value of each Member, until each Member has received distributions pursuant to this subparagraph (e) in an amount equal to such Member's Undistributed Enhanced Value;

(f) Next, distributions shall be made to the Members, *pro rata* in proportion to the respective Undistributed Required Additional Capital Return of each Member, until each Member has received distributions pursuant to this subparagraph (f) in an amount equal to such Member's Undistributed Required Additional Capital Return;

(g) Next, distributions shall be made to the Members, *pro rata* in proportion to the respective Undistributed Required Additional Capital of each Member, until each Member has received distributions pursuant to this subparagraph (g) in an amount equal to such Member's Undistributed Required Additional Capital;

(h) Next, distributions shall be made to the Members, *pro rata* in proportion to the respective Undistributed Initial Capital of each Member, until each Member has received distributions pursuant to this subparagraph (h) in an amount equal to such Member's Undistributed Initial Capital; and

(i) Next, the balance remaining after the payments and distributions to the Members made pursuant to subparagraphs (a), (b), (c), (d), (e), (f), (g) and (h) of this Section, shall be distributed to the Members, *pro rata*, in proportion to their then respective Percentages.

Section 4.2 **Proceeds and Distributions in Liquidation**. The proceeds received by the Company in connection with the liquidation and winding up of the Company shall be applied by the Managing Member (or the Liquidator responsible for winding up the affairs of the Company pursuant to Section 7.2) in the following order of priority:

(a) First, to the payment of the expenses incurred in connection with the dissolution and termination;

(b) Next, to the payment of creditors of the Company (including payments to the Albanese Member in repayment of any Preferred Capital Loans and the Lending Members in repayment of any Member Loans as set forth in Sections 4.1(a) and (b)), except for secured creditors whose obligations will be assumed or otherwise transferred on a liquidation of the Company property or assets; and

(c) The balance, if any, shall be distributed to the Members to the extent of and in proportion to the positive balances of their Capital Accounts after Capital Accounts have been adjusted for the allocation of Profit and Loss (and items thereof) and Gain on Disposition or Loss on

Disposition for the Company Accounting Year during which such liquidation occurs and all prior periods.

Section 4.3 General Distribution Rules. The timing and amount of all distributions shall be in accordance with Sections 4.1, 4.2, 7.2 and 7.3. All distributions of cash shall be made to the Members shown on the records of the Company to have been Members on the date of the distribution. Distributions of Net Available Cash, Net Mortgage Proceeds and Capital Receipts made to a Member with respect to any Company Accounting Year shall be deemed to be advances on account of the Member's share of the distributable amounts thereof. For purposes of this Agreement, the term "distributable" with respect to distributions of Net Available Cash, Net Mortgage Proceeds and Capital Receipts shall mean the amount of the distributions as finally determined by the Managing Member for the Company Accounting Year in respect of which they were made. Any over-distribution thereof to any Member in respect of a Company Accounting Year shall be repaid by the Member to the Company and, if applicable, distributed to the Member(s) which has (have) received an under-distribution on the later to occur of (i) sixty (60) days after the end of the Company Accounting Year, or (ii) fifteen (15) days after the Managing Member has given notice thereof to the Member that has received an over-distribution, which notice shall be given as soon as is practicable after the end of the Company Accounting Year.

Section 4.4 Source of Distributions. Each Member shall look solely to the assets of the Company for the return of its Capital Contributions and its share of distributions of the Company and shall have no recourse upon dissolution or otherwise against the Company, the Managing Member or any other Member. No Member shall have any right to receive any distributions except as provided in this Agreement or any right to demand or receive property other than cash upon dissolution and termination of the Company. No Member shall be obligated to restore a negative balance in its Capital Account except to the extent (i) caused by any over-distribution to such Member as provided in Section 4.3 hereof or (ii) of the excess, if any, of (x) the Waived Amount with respect to such Member over (y) cumulative allocations of Profits and Gain on Disposition to such Member in accordance with the provisions of Section 5.7(d).

Section 4.5 Tax Allocations.

(a) **Allocations of Operating Profit and Loss.** For each Company Accounting Year from the date of this Agreement until the termination of the Company, after adjusting the Capital Account of each Member for the adjustments provided for in subparagraph (d) of this Section and for any adjustments required pursuant to subparagraph (d) of Section 5.7, Profit or Loss (including, if necessary, items of gross income or deduction) for such Company Accounting Year shall be allocated to the Capital Accounts of the Members in a manner such that, as of the end of such Company Accounting Year, the Capital Account of each Member shall be equal to the amount which would be distributed to such Member, determined as if the Company were to sell and liquidate all of its assets (other than cash) for the book value thereof and distribute the amount thereof together with all cash of the Company in excess of the liabilities of the Company (including the unpaid interest and principal of any Preferred Capital Loans and Member Loans) to the Members pursuant to Section 4.1 (other than pursuant to Sections 4.1(a) and (b)).

(b) **Allocations of Gain on Disposition and Loss on Disposition.** For each Company Accounting Year from the date of this Agreement until the termination of the Company, after adjusting the Capital Account of each Member for the allocations of Profit or Loss provided for in subparagraph (a) of this Section, for the adjustments provided for in subparagraph (d) of this Section and for any remaining adjustments required pursuant to subparagraph (d) of Section 5.7, Gain on Disposition or Loss on Disposition for such Company Accounting Year shall be allocated to the Capital Accounts of the Members in a manner such that, as of the end of such Company Accounting Year, the Capital Account of each Member shall be equal to the amount which would be distributed to such Member, determined as if the Company were to sell and liquidate all of its assets (other than cash) for the book value thereof and distribute the amount thereof together with all cash of the Company in excess of the liabilities of the Company (including the unpaid interest and principal of any Preferred Capital Loans and Member Loans) to the Members pursuant to Section 4.1 (other than pursuant to Sections 4.1(a) and (b)).

(c) **Allocations of Tax Credits.** For each Company Accounting Year from the date of this Agreement until the termination of the Company, Tax Credits shall be allocated among the Members in proportion to the respective aggregate amounts of Net Available Cash, Net Mortgage Proceeds and Capital Receipts distributed to them during such Company Accounting Year, but excluding amounts distributed pursuant to Sections 4.1(a) and 4.1(b).

(d) **Capital Accounts Adjustments.** Prior to making the allocations described in this Section for each Company Accounting Year, the Capital Account of each Member shall first be adjusted for: (i) all Capital Contributions made by such Member during such Company Accounting Year, (ii) all distributions other than distributions of Capital Receipts paid or payable to such Member with respect to such Company Accounting Year, (iii) all special allocations to such Member under Sections 4.7 and 4.8 with respect to such Company Accounting Year and (iv) such Member's share of Company Minimum Gain (as determined according to Regulation Section 1.704-2(d) and (g)) and Member Nonrecourse Debt Minimum Gain (as determined according to Regulation Section 1.704-2(i)) determined as of the end of such Company Accounting Year.

Section 4.6 **Rules of Construction.**

(a) For purposes of applying Section 4.5 as a result of a disposition occurring with respect to part (but less than all) of any capital asset of the Company or any Pass-Through Entity, a Member's Capital Account balance shall be deemed to be increased by the Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain remaining after the disposition as determined under the Regulations under Code Section 704(b).

(b) Except as is otherwise provided in this Article 4, an allocation of Company taxable income or taxable loss to a Member shall be treated as an allocation to the Member of the same share of each item of income, gain, loss and deduction that has been taken into account in computing taxable income or taxable loss.

Section 4.7 Minimum Gain Chargeback and Qualified Income Offset.

(a) **No Impermissible Deficits.** Notwithstanding any other provision of this Agreement, taxable loss (or items of deduction) shall not be allocated to a Member to the extent that the Member has or would have, as a result of the allocation, an Adjusted Capital Account Deficit. Any taxable loss (or items of deduction) which otherwise would be allocated to a Member, but which cannot be allocated to the Member because of the application of the immediately preceding sentence, shall instead be allocated to the other Members in accordance with the provisions of Section 4.5.

(b) **Qualified Income Offset.** In order to comply with the "qualified income offset" requirement of the Regulations under Code Section 704(b), and notwithstanding any other provision of this Agreement to the contrary except subparagraph (c) of this Section, in the event a Member for any reason (whether or not expected) has an Adjusted Capital Account Deficit, items of Profit and Gain on Disposition (consisting of a pro rata portion of each item of income comprising the Company's Profit and Gain on Disposition, including both gross income and gain for the taxable year) shall be allocated to the Member in an amount and manner sufficient to eliminate as quickly as possible the Adjusted Capital Account Deficit.

(c) **Minimum Gain Chargeback.** In order to comply with the "minimum gain chargeback" requirements of Regulation Sections 1.704-2(f)(1) and 1.704-2(i)(4), and notwithstanding any other provision of this Agreement to the contrary, in the event there is a net decrease in a Member's share of Company Minimum Gain and/or Member Nonrecourse Debt Minimum Gain during a Company taxable year, the Member shall be allocated items of income and gain for that year (and if necessary, other years) as required by and in accordance with Regulation Sections 1.704-2(f)(1) and 1.704-2(i)(4) before any other allocation is made.

Section 4.8 Other Tax Allocation Provisions.

(a) **Income Characterization.** For purposes of determining the character (as ordinary income or capital gain) of any Gain on Disposition allocated to the Members pursuant to Section 4.5 or 4.7, the portion of the taxable income of the Company allocated pursuant to Section 4.5 which is treated as ordinary income attributable to the recapture of depreciation shall, to the extent possible, be allocated among the Members in the proportion which (i) the amount of depreciation previously allocated to each Member bears to (ii) the total amount of depreciation allocated to all Members. The provisions of this subparagraph (a) shall not alter the amount of allocations among the Members pursuant to Section 4.5 but merely the character of income so allocated.

(b) **Change in Percentages.** Notwithstanding any other provision of this Article 4 to the contrary, in the event any Member's Percentage changes during a fiscal year for any reason, including the transfer of any interest in the Company or an adjustment of the Members' Percentages hereunder, the allocations of Profit or Loss from operations or Gain on Disposition or Loss on Disposition, and the amount of distributions, under this Article 4 shall be adjusted as necessary to reflect the varying interests of the Members during the fiscal year using an interim

closing of the books method as of the date of the change in the Percentage or any other method as reasonably determined by the Managing Member.

(c) **Section 704(c) Mandatory Allocations.**

(i) Notwithstanding any other provision of this Article 4 to the contrary, in the event Code Section 704(c) or Code Section 704(c) principles applicable under Regulation Section 1.704-1(b)(2)(iv) require allocations of income or loss of the Company in a manner different than that set forth above, the provisions of Code Section 704(c) and the Regulations thereunder shall control the allocations among the Members.

(ii) Any item of income, gain, loss and deduction with respect to any property (other than cash) that has been contributed by a Member to the capital of the Company or which has been revalued for Capital Account purposes pursuant to Regulation Section 1.704-1(b)(2)(iv) and which is required or permitted to be allocated to the Member for income tax purposes under Code Section 704(c) so as to take into account the variation between the tax basis of the property and its fair market value at the time of its contribution or revaluation shall be allocated solely for income tax purposes in the manner so required or permitted under Code Section 704(c) using the "traditional method" described in Regulation Section 1.704-3(b)(or any successor Regulation), which allocations are to be made as reasonably determined by the Managing Member; *provided, however,* that curative allocations consisting of the special allocation of gain or loss upon the sale or other disposition of the contributed or revalued property (or deemed contributed property) shall be made in accordance with Regulation Section 1.704-3(c) to the extent necessary to eliminate any disparity, to the extent possible, between the Member's book and tax capital accounts attributable to the property; and *provided, further,* that any other method allowable under applicable Regulations may be used in connection with any contribution of property or following any revaluation of Capital Accounts as shall be reasonably determined by the Managing Member. Any elections or other decisions relating to allocations under this subparagraph (c)(ii) will be made in any manner that the Managing Member reasonably determines to reflect the purpose and intention of this Agreement. Allocations under this subparagraph (c)(ii) are solely for purposes of federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profit or Loss from operations or Gain on Disposition or Loss on Disposition or other items or distributions under any provision of this Agreement.

(iii) Upon the purchase of the Property by the Company, the Capital Accounts of the Members shall be revalued in accordance with the provisions of this subparagraph (c) to account for the Enhanced Value Contribution of the Members.

(d) **Nonrecourse Deductions and Member Nonrecourse Deductions.** Notwithstanding any other provision of this Article 4 to the contrary, (i) all Nonrecourse Deductions of the Company for any Company Accounting Year shall be allocated among the Members in accordance with their respective Percentages; and (ii) all Member Nonrecourse Deductions of the Company for any Company Accounting Year that, pursuant to Regulation Section 1.704-2(i), are attributable to a Member Nonrecourse Debt for which a Member (or a Person related to the Member

under Regulation Section 1.752-4(b)) bears the economic risk of loss (within the meaning of Regulation Section 1.752-2) shall be allocated to the Member as required by Regulation Section 1.704-2(i)(1).

(e) **References to Regulations**. Any reference in this Agreement to a provision of final and/or temporary Regulations shall, in the event the provision is modified or renumbered, be deemed to refer to the successor provision as so modified or renumbered, but only to the extent the successor provision applies to the Company under the effective date rules applicable to the successor provision or the Managing Member otherwise so elects under applicable elections contained in the Regulations.

Section 4.9 Intent of Allocations. The parties intend that the foregoing tax allocation provisions of this Article 4 shall produce final Capital Account balances of the Members that will permit liquidating distributions that are made in accordance with final Capital Account balances under Section 4.2 hereof to be made (after unpaid loans and interest thereon have been paid, including those owed to Members) in a manner identical to the order of priorities set forth in Section 4.1. To the extent that the tax allocation provisions of this Article 4 would fail to produce the intended final Capital Account balances: (i) the provisions of this Article 4 shall be amended by the Managing Member if and to the extent necessary to produce the intended final Capital Account balances and (ii) taxable income and taxable loss of the Company for prior open years (or items of gross income and deduction of the Company for prior open years) shall be reallocated by the Managing Member among the Members to the extent it is not possible to achieve the intended final Capital Account balances with allocations of items of income (including gross income) and deduction for the current year and future years, as reasonably determined by the Managing Member. This Section shall control notwithstanding any reallocation or adjustment of taxable income, taxable loss, or items thereof by the Internal Revenue Service or any other taxing authority.

Section 4.10 Basis Elections. In the event of a transfer of all or any part of a Member's Economic Interest in the Company, the Managing Member shall elect on behalf of the Company to adjust the basis of the Company's assets under Code Section 754. The transferor or transferee of an Economic Interest shall pay all costs of preparing and filing all instruments or documents necessary to effectuate the election if made.

Section 4.11 General Allocation Rules. All Profit and Loss of the Company and Gain on Disposition or Loss on Disposition shall be allocated with respect to each Company Accounting Year (or part thereof) within ninety (90) days after the end of the year, or as soon thereafter as is practically possible. All Profit and Loss and Gain on Disposition or Loss on Disposition shall be allocated to the Members shown on the records of the Company to have been Members as of the last day of the Company Accounting Year for which the allocation is to be made, except that, if a Member sells or exchanges its Economic Interest or acquires an Economic Interest from the Company upon the Member's admission to the Company as a member thereof, the Profit or Loss and Gain on Disposition or Loss on Disposition shall be allocated between the transferor and the transferee (or among the Members, as the case may be) by taking into account their varying interests during the Company Accounting Year in accordance with Code Section 706(d), using the interim

closing of the books method or any other method as shall be reasonably determined by the Managing Member. The allocation of Profit or Loss or Gain on Disposition or Loss on Disposition contained in this Article 4, shall automatically be adjusted equitably to account for any recalculation of the Economic Interests of the Members pursuant to Section 3.3(b).

Section 4.12 Sharing of Company Nonrecourse Debt.

(a) Throughout the term of the Company, the nonrecourse debt of the Company (other than Member Nonrecourse Debt) shall be allocated for tax purposes among the Members as follows:

(i) First, the portion of the nonrecourse debt equal to the amount of any Company Minimum Gain, shall be allocated among the Members in accordance with each Member's share of Company Minimum Gain;

(ii) Next, the portion of the nonrecourse debt equal to the amount of any taxable gain that would be allocated to the Members under Code Section 704(c) (or in the same manner as Code Section 704(c) in connection with a revaluation of Company property) if the Company disposed of (in a taxable transaction) all Company property subject to one or more nonrecourse liabilities of the Company in full satisfaction of the liabilities and for no other consideration, shall be allocated among the Members in accordance with each Member's share of the taxable gain pursuant to Code Section 704(c) (or Code Section 704(c) principles in the case of a revaluation of Company property); and

(iii) The balance, if any, of the nonrecourse debt shall be allocated among the Members in accordance with their then respective Percentages.

(b) To the extent that any Member's share of nonrecourse debt as specified in subparagraph (a) of this Section exceeds the amounts referred to in Regulation Sections 1.752-3(a)(1) and (2), it is intended that the foregoing shares shall be viewed and treated as reasonably consistent with allocations (which have substantial economic effect) of some significant item of partnership income or gain within the meaning of Regulation Section 1.752-3(a)(3).

Section 4.13 Tax Withholding.

(a) The Managing Member is authorized and directed to cause the Company to withhold from or pay on behalf of any Member the amount of federal, state, local or foreign taxes that the Managing Member, after consultation with the Member, reasonably believes the Company is required to withhold or pay with respect to any amount distributable or allocable to the Member pursuant to this Agreement, including, without limitation, any taxes required to be paid by the Company pursuant to Code Sections 1441, 1442, 1445, 1446, 1471, 1472, 1473 or 1474 and any taxes imposed by any state or other taxing jurisdiction on the Company as an entity. Without limiting the foregoing, the Managing Member shall cause the Company to withhold (and remit to the appropriate governmental authority), from amounts otherwise distributable to a Member, any taxes that the Member notifies the Managing Member in writing should be withheld, which notice shall be

given by any Member who becomes aware of any withholding obligation to which the Member is subject and shall specifically set forth, *inter alia*, the rate at which tax should be withheld and the name and address to which any amounts withheld should be remitted.

(b) If the Company is required to withhold and pay over to taxing authorities amounts on behalf of a Member exceeding available amounts then remaining to be distributed to the Member, the payment by the Company shall constitute a loan to the Member that is repayable by the Member on demand, together with interest at the fifteen percent (15%) per annum or the maximum rate permitted under applicable law, whichever is less, calculated upon the outstanding principal balance of the loan as of the first day of each month. Any loan made pursuant to this Section shall be repaid to the Company, in whole or in part, as determined by the Managing Member in its sole discretion, either (i) out of any distributions from the Company which the Member is (or becomes) entitled to receive, or (ii) by the Member in cash upon demand by the Managing Member (said Member bearing all of the Company's costs of collection, including reasonable attorneys' fees, if payment is not remitted promptly by the Member after a demand for payment).

(c) Each Member agrees to cooperate fully with all efforts of the Company to comply with its tax withholding and information reporting obligations and agrees to provide the Company with any information the Managing Member may reasonably request from time to time in connection therewith.

ARTICLE 5
MANAGEMENT RIGHTS, POWERS, AND DUTIES

Section 5.1 **Management**. Subject to the approval rights of the Non-Managing Member and rights of the Members specified in this Agreement or as may be otherwise required by the Act, the Company shall be managed by the Managing Member in accordance with the provisions of this Article 5.

Section 5.2 **Powers, Duties and Designation of Managing Member**.

(a) Except as set forth in Section 5.3 or as may otherwise be required by the Act, the Managing Member shall have full, exclusive and complete discretion, power and authority to manage, control, administer and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting the business and affairs of the Company without the consent or approval of any other Member. Within the resources available to the Company, the Managing Member shall carry out the purposes of the Company as set forth in Section 2.3.

(b) The Managing Member shall devote such time to the business and affairs of the Company as is necessary to carry out the Managing Member's duties described in this Agreement. The Managing Member shall perform its managerial duties hereunder in good faith, in a manner it reasonably believes to be in the best interests of the Company and with such care as an ordinarily prudent person in a like position would use under similar circumstances. The Managing Member does not in any way guaranty the return of the Members' Capital Contributions or loans or a profit for the Members from the operations of the Company. The Managing Member shall be fully

protected, and shall not be liable to the Company or to any Member, for (i) acts performed or omitted by the Managing Member or its agents for and on behalf of the Company in furtherance of the Company's interests, including, without limitation, acts or omissions made in good faith based upon the records of the Company or the opinions of professionals employed by the Company or (ii) any loss or damage sustained by the Company or any Member, unless such loss or damage shall have been the result of gross negligence, willful misconduct, fraud or bad faith by the Managing Member. The Managing Member shall have the power and authority to delegate its rights, powers and duties to manage and control the business and affairs of the Company to one or more Affiliates of the Managing Member, including delegation by management agreement or other arrangement; *provided, however,* notwithstanding any delegation pursuant to the foregoing, (A) the Managing Member shall remain ultimately responsible for the proper execution of the duties so delegated and (B) the Company shall have no obligation to pay such Affiliates any fee or compensation for discharging such duties.

(c) Nothing in this Agreement shall be construed to negate any duty that is implied by applicable law and that, under the applicable law, cannot be waived by the Members, *provided, however*, that a Member shall not be liable to the Company or any Subsidiary Entity or to other Members in respect of such duties, except to the extent provided in Section 5.9.

(d) The Managing Member shall not take any action or omit to take any action, the taking or omission of which would impair the rights of either Member under Section 5.10 or Section 5.11.

(e) The Albanese Member and the BRG Member are each hereby designated as a Managing Member of the Company and shall manage the Company in accordance with this Agreement. While the Managing Member is comprised of both the Albanese Member and the BRG Member, all decisions regarding the management and operation of the business and affairs of the Company shall be made jointly, including the development and construction of the Project, and neither the Albanese Member nor the BRG Member shall have the authority to make any such decisions without first obtaining the approval of the other Member. Except as otherwise provided in subparagraph (f) of this Section, (i) the Albanese Member's power and authority as Managing Member to manage and control the Company as provided in this Section shall continue indefinitely until dissolution and liquidation of the Company and (ii) the BRG Member's power and authority as Managing Member to manage and control the Company as provided in this Section shall continue until the Stabilization Date and thereafter the BRG Member shall possess the rights of a Non-Managing Member.

(f) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence of a Managing Member Removal Event to a Managing Member, such Managing Member may be removed as a Managing Member of the Company by the affirmative vote of Members holding a majority of the Percentages, excluding the Percentage of such Managing Member. Upon any removal of a Managing Member in accordance with this subparagraph, the remaining Managing Member shall act as the sole Managing Member of the Company or if such removal would result in the Company having no Managing Member, the Non-Managing Member

shall contemporaneously therewith become the sole Managing Member with all attendant rights unless such Non-Managing Member was previously removed as a Managing Member of the Company pursuant to the provisions of this subparagraph, in which event the Company shall thereafter be managed by the Members and all decisions regarding the management and operation of the business and affairs of the Company shall require the affirmative vote of Members holding a majority of the Percentages. From and after the date of the removal of a Managing Member in accordance with this subparagraph, the removed Managing Member shall be deemed a Non-Managing Member.

(g) Without in any way diminishing the authority granted to the Managing Member pursuant to this Section 5.2, the Managing Member shall confer and share information regarding the Company with the Non-Managing Member on a regular basis, so that the Company continually benefits from the collective experience, insights, familiarity with the Harrison, New Jersey, marketplace and relationships of the Members.

Section 5.3 Voting by and Meetings of Members.

(a) Prior to the date that the Company is managed by one Managing Member pursuant to the provisions of Section 5.2, the Albanese Member and the BRG Member, each in their capacity as a Managing Member, shall jointly make all decisions regarding the management and operation of the business and affairs of the Company, including the development and construction of the Project.

(b) From and after the date that the Company is managed by one Managing Member pursuant to the provisions of Section 5.2, the Managing Member may not make the following decisions regarding the business and affairs of the Company (each a "**Major Decision**") without first obtaining the approval of the Non-Managing Member in accordance with the provisions of this Section:

(i) Approval of the Annual Budget;

(ii) Establishing a working capital reserve or any other reserve not required by any Company lender, which is not an Affiliate of any Member;

(iii) Any supplement to, or revision of, the Annual Budget; *provided, however,* that an expenditure that is inconsistent with the Annual Budget will not constitute a Major Decision if such expenditure (A) would not cause any line item in the Annual Budget to which such expenditure relates to exceed the budgeted amount of such line item in the Annual Budget by more than ten percent (10%) in any calendar year, (B) would not cause the aggregate amount of actual expenses incurred in any calendar year to exceed the entire amount of budgeted expenses in the Annual Budget by more than five percent (5%) in such calendar year, (C) would be used to pay any Emergency Expenses or (D) would be used to pay any Non-Discretionary Expenses (clauses (A)-(D), the "**Permitted Tolerances**");

(iv) the request for Additional Capital Contributions; *provided, however,* any Member may, without the consent of the other Member, make a request for Additional Capital Contributions in accordance with Section 3.2 to the extent required to fund Additional Project Costs and/or Non-Discretionary Expenses;

(v) the formation of a Subsidiary Entity or the conduct of the business and affairs of the Company, or any portion thereof, through such Subsidiary Entity;

(vi) obtaining any financing by the Company subordinate to the Construction Loan or the Permanent Loan (other than Preferred Capital Loans or Member Loans) for any purpose; or any agreement by the Company to amend, modify, prepay (other than at the scheduled maturity date) or refinance any such financing; *provided, however,* the Managing Member may agree on behalf of the Company, without the approval of the Members, to borrow money to finance any insurance premiums, equipment leases or trade payables in the ordinary course of business that in the aggregate do not exceed $100,000;

(vii) the borrowing of money by the Company from any one or more Members (or their respective Affiliates) on terms other than those set forth in Section 3.8(b) or Section 3.9; or any agreement by the Company to amend or modify the terms of any such financing;

(viii) the decision to distribute less than ninety percent (90%) of Net Available Cash at least quarterly or the decision to distribute less than ninety percent (90%) of Net Mortgage Proceeds or Capital Receipts within thirty (30) days after receipt;

(ix) amending or modifying the Redevelopment Agreement or the Indemnity and Settlement Agreement;

(x) the selection of the Company's or any Subsidiary Entity's accountants or changes in the Company's or any Subsidiary Entity's accounting method;

(xi) the sale or exchange of the Property or any portion thereof, other than pursuant to Section 5.10 or Section 5.11 or the purchase of any real estate other than the Primary Property;

(xii) the sale of any existing development rights appurtenant to the Property or rights to acquire additional development rights with respect to the Property;

(xiii) initiating or settling any litigation or tax disputes affecting the Company or its assets for more than $100,000;

(xiv) the payment to or entering into any agreement or transaction with the Managing Member or any Affiliate of the Managing Member; *provided, however*, the approval of the Members shall not be required with respect to (1) the agreement of the Company to pay the Development Fee to the Developer and Co-Developer and Reimbursable Salary Costs to the Developer described in Section 5.7 hereof, (2) the agreement of the Company to pay to ARM the

Property Management Fee, Asset Management Fee and Leasing Fee described in Section 5.8 hereof or (3) any other payment, agreement or transaction specifically authorized in this Agreement;

(xv) the admission of additional Members to the Company or the consent to a Transfer of a Membership Interest of a Member or to the Voluntary Withdrawal of a Member; *provided, however,* the approval of the Members shall not be required with respect to: (1) any Transfers of all or a portion of the Membership Interest of a Defaulting Member to the Non-Defaulting Members pursuant to Section 3.3, (2) any Transfer of a Membership Interest between the Members pursuant to the provisions of Section 5.10 or Section 5.11, and (3) any Transfer of the Membership Interest of a Member permitted without the consent of the Members pursuant to the provisions of Section 6.4 and the admission of the transferee of such Membership Interest as a new Member of the Company;

(xvi) the amendment of any provision of this Agreement, other than any amendment specifically authorized pursuant to Section 3.3(b) or Article 4 hereof;

(xvii) the filing, or consent to the filing, by the Company of a petition in any bankruptcy, reorganization or insolvency proceeding; or the making by the Company of a general assignment for the benefit of creditors; or the consent by the Company to the appointment of a trustee or receiver of its property and assets;

(xviii) the dissolution of the Company prior to the sale of the Property and the distribution of all Capital Receipts therefrom; or the approval of a merger or consolidation of the Company with or into another limited liability company or other business entity;

(xix) changing the tax structure of the Company or any Subsidiary Entity, or causing the Company or any Subsidiary Entity to be treated as a corporation for federal income tax purposes or otherwise modifying the treatment of the Company as a partnership, or any Subsidiary Entity as a partnership or a disregarded entity, for federal income tax purposes; and

(xx) any other matter set forth in this Agreement which requires approval of the Members.

(c) The Managing Member may call for a meeting of the Members from time to time for the purpose of discussing or voting on any Major Decision or other matter on which the Members are entitled to vote pursuant to this Agreement or the Act. Such meetings shall be held at mutually convenient places and any Authorized Representative of the Members may attend by telephone conference or video conference. Member meetings shall be considered duly called and held if (a) notice of the meeting is given to each Authorized Representative not less than three (3) Business Days in advance of the meeting, or in the case of an emergency one (1) Business Day, and (b) at least one (1) Authorized Representative of each Member is present in person or by means of telephone conference or video conference (which shall constitute a quorum). Any Authorized Representative of a Member may give his/her proxy to attend, participate in and vote at a meeting to another Authorized Representative. A written record of all votes taken by the Members shall be kept by the Managing Member in the Company record book. Any action required or permitted to be taken

at any meeting may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the number of Authorized Representatives of each Member that would be required, if such action were to take place at a duly called and held meeting, to satisfy the requirements of subparagraph (d) of this Section.

(d) The affirmative vote of one (1) Authorized Representative for each Member shall be required to approve any Major Decision or other matter on which the Members are entitled to vote pursuant to this Agreement or the Act.

(e) Each Member shall designate at least two (2) Authorized Representatives to act on behalf of the Member and vote on Major Decisions and each other matter on which the Members are entitled to vote pursuant to this Agreement or the Act. The act of any one (1) Authorized Representative of a Member shall constitute the act of, and be binding upon, such Member. The Albanese Member hereby designates Russell C. Albanese and Christopher V. Albanese as its Authorized Representatives and the BRG Member hereby designates Thomas A. Berkenkamp and Mark Schaevitz as its Authorized Representatives. Each Member may replace its Authorized Representatives from time to time by notice to the other Member.

(f) Except to the extent set forth in this Section or otherwise specified in this Agreement or required by the Act, the Non-Managing Member shall not have the right to participate in any other decision regarding the business and affairs of the Company. Notwithstanding anything to the contrary in the Act, the Non-Managing Member does not have the authority to act as an agent of the Company by virtue of being a Member.

(g) Subject to the provisions of Section 5.9(a), any Member who takes any action that binds the Company in violation of this Section shall be solely responsible for any loss or expense, including reasonable attorneys' fees and expenses, incurred or suffered by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to such loss or expense.

(h) The Members shall have no obligation to consult with or obtain the approval of any holder of an Economic Interest who is not a Member with respect to any decision made or action taken on behalf of the Company pursuant to Section 5.2 or this Section. Each such holder agrees that it will not interfere or attempt to interfere (and will cause its Affiliates, and all Persons claiming by or through any of them, not to interfere) directly or indirectly with the conduct of the business of the Company by the Managing Member and/or the Members, or the right of the Managing Member to control and manage the Company, the Company's or any Subsidiary Entity's business and the Property, or the taking or failure to take any action hereunder by the Managing Member and/or the Members. Each such holder shall indemnify, defend and hold harmless the Company and the Members from and against any and all loss or expense, including reasonable attorneys' fees and expenses, incurred or suffered by the Company or the Managing Member and/or the Members based upon, arising out of, in connection with or by reason of the breach by such holder of the covenants set forth in this subparagraph.

Section 5.4 Budgets.

(a) No later than ninety (90) days after the Substantial Completion Date, the Managing Member shall prepare and deliver to the Non-Managing Member an initial draft budget with respect to the period from the Stabilization Date to the end of the Company Accounting Year in which the Stabilization Date occurs, and at least ninety (90) days before the Company Accounting Year occurring immediately after the Company Accounting Year in which the Stabilization Date occurs, and each Company Accounting Year thereafter, the Managing Member shall prepare and deliver to the Non-Managing Member a draft annual budget with respect to such Company Accounting Year. Each draft annual budget shall cover the activities related to the Property for the next Company Accounting Year (and in the case of the initial budget, the period covered thereby), shall be in such detail and shall be accompanied by such supporting material as the Non-Managing Member reasonably requires and shall include (i) a staffing plan for the year, identifying all expected consultants and all proposed compensation arrangements, (ii) the Managing Member's reasonable estimate of all capital improvements to be undertaken for the year or that are mandated by law, regulation or order of any governmental authority, (iii) the Managing Member's reasonable estimate of all Operating Costs expected to be incurred for the year, (iv) the Managing Member's reasonable estimate of all income expected to be received during the year and (v) if applicable, the Managing Member's recommendation that the Members contribute any Additional Capital Contributions.

(b) Within forty-five (45) days following its receipt of each draft annual budget (or initial draft budget), the Non-Managing Member shall either approve or disapprove the draft budget in accordance with the provisions of Section 5.3(b)(i). A failure to approve shall be deemed a disapproval, in which case the Authorized Representative who disapproved shall promptly specify in reasonable detail the reasons for its disapproval in order to give the Managing Member guidance in the preparation of a revised draft budget. Within ten (10) business days after any disapproval, the Managing Member shall submit a revised draft budget to the Non-Managing Member for its approval which responds to the reasons for disapproval of the prior draft budget. Once a draft budget is approved by the Non-Managing Member in accordance with the provisions of Section 5.3(b)(i), it shall constitute the Annual Budget for the period to which it pertains. Each reference in this Agreement to an "**Annual Budget**" means the Annual Budget most recently approved by the Non-Managing Member in accordance with the provisions of Section 5.3(b)(i) for the period in question. If the Members do not agree on the draft budget before the beginning of the Company Accounting Year covered thereby, the Managing Member shall be authorized to make such operating expenditures as are provided in the last Annual Budget of the Company.

(c) No supplement to, or revision of, an Annual Budget shall be made without the further approval of the Members in accordance with the provisions of Section 5.3(b)(iii); *provided, however,* notwithstanding the provisions of this Section, the Managing Member may supplement or revise the Annual Budget without the approval of (but with written notice to) the Non-Managing Member in order to pay expenses within the Permitted Tolerances.

(d) Any Annual Budget may be modified with the consent of the Members at any time, and any Authorized Representative of a Member may propose modifications to an Annual Budget at any time.

Section 5.5 Other Activities of Members.

(a) Except as otherwise expressly provided in subparagraph (b) of this Section, nothing in this Agreement shall be deemed to restrict in any way the rights of any Member, or any Affiliate of any Member, to conduct any other business or activity whatsoever, and no Member shall be accountable to the Company or to any other Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to the Members' respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of any other Member or its Affiliate.

(b) Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and/or their Affiliates. Notwithstanding anything to the contrary contained in this Agreement, in any case where the Company engages in business dealings and undertakings with Members and/or their Affiliates (including without limitation, those described in Section 5.8), the business dealings and undertakings shall be on terms that, when taken together, are commercially reasonable and competitive in light of the terms that could be obtained in a similar arrangement with qualified, unaffiliated third parties. The Members hereby acknowledge and agree that the terms for the provision of development management services by the Developer and Co-Developer described in Section 5.7 are commercially reasonable and competitive in light of the terms that could be obtained in a similar arrangement with qualified, unaffiliated third parties.

Section 5.6 Company Financing; Guaranties.

(a) Prior to the commencement of construction of the Project, the Members intend that the Company seek to obtain a construction loan to finance the development of the Project (the "**Construction Loan**") on commercially reasonable market terms, in a principal amount in the maximum amount obtainable (and will seek to obtain no less than the principal amount of $65,000,000) and may include mezzanine and/or preferred equity financing. The Members will cooperate with each other in sourcing the Construction Loan and in negotiating the documents, instruments and agreements required to be executed and delivered in connection therewith. If the principal amount of the Construction Loan exceeds $65,000,000, the Initial Capital Contributions of the Members will be reduced, *pro rata* in accordance with their Initial Contribution Ratios.

(b) As soon as reasonably practicable after the completion of construction of the Project, the Members intend that the Company seek to obtain a permanent loan to refinance all of the Company's outstanding indebtedness, including without limitation, the Construction Loan (the

"**Permanent Loan**") on commercially reasonable market terms, in a principal amount in the maximum amount obtainable but no less than the principal amount of the Construction Loan. The Members will cooperate with each other in sourcing the Permanent Loan and in negotiating the documents, instruments and agreements required to be executed and delivered in connection therewith. If the principal amount of the Permanent Loan exceeds the amount due to pay in full the Construction Loan and the other indebtedness of the Company, the Net Mortgage Proceeds generated thereby shall be distributed to the Members in accordance with the provisions of Section 4.1.

(c) Each Member agrees to provide (or to cause a creditworthy Affiliate to provide) any guaranty (including any completion guaranty, nonrecourse carveout guaranty, principal repayment guaranty, carry guaranty or environmental guaranty) to a Company lender reasonably requesting the same (each such guaranty is herein referred to as a "**Guaranty**" and each such party executing a Guaranty is herein referred to as a "**Guarantor**"), without additional compensation; and further agrees to make commercially reasonable efforts to cause such Company lender to accept such Guaranty or Guaranties on a several, but not joint, basis with the liability of each Member or its creditworthy Affiliate under such Guaranty or Guaranties to be apportioned based upon and limited to the Additional Contribution Ratio of such Member (i.e., the Albanese Member's or its creditworthy Affiliate's share shall be 66.67% and the BRG Member's or its creditworthy Affiliate's share shall be 33.33%). Each Member that is required to provide a Guaranty (or to cause a creditworthy Affiliate to provide a Guaranty) pursuant to this Agreement reserves the right to review and reasonably approve the form and substance of such Guaranty. Concurrently with the execution and delivery of any Guaranty by a Guarantor which provides that the liability of such Guarantor is joint and several with each other Guarantor executing such Guaranty, the Members shall cause a cross-indemnity agreement substantially in the form attached hereto as Exhibit F ("**Cross-Indemnity Agreement**") to be executed and delivered by the Members and the Guarantors executing any such Guaranty. The reasonable out-of-pocket expenses (including reasonable attorneys' fees) incurred by a Guarantor in negotiating a Guaranty shall be reimbursed by the Company upon demand by the Guarantor.

(d) Any payment made to the holder of a Guaranty by or on behalf of a Guarantor or any payment made by a Member or its Affiliate pursuant to a Cross-Indemnity Agreement (less any amount reimbursed to such Member or its Affiliate pursuant to the Cross-Indemnity Agreement) shall be deemed to be a loan to the Company on the date such payment is made equal to the sum of the amount paid plus all reasonable expenses incurred by such Guarantor or any Member in negotiating or defending against the enforcement of such Guaranty ("**Guaranty Loan**"). Each Guaranty Loan shall (i) have a term to maturity of three (3) years, (ii) amortize on a straight line basis over an amortization period of ten (10) years, (iii) bear interest at eighteen percent (18%) per annum, but not to exceed the maximum rate permitted by law, (iv) be unsecured, (v) be prepayable in whole or in part at any time without premium, (vi) be payable as an Operating Cost of the Company and (vii) in all events, be repaid prior to the payment of (1) any interest or principal on any Member Loan to any Lending Members and (2) any distributions to the Members pursuant to Article 4 of this Agreement. Each Guarantor which makes such a payment shall be subrogated to the rights of the holder of such Guaranty against the Company.

Section 5.7 Development Management Services.

(a) The Members agree that Albanese Development Corporation ("**Developer**"), an Affiliate of the Albanese Member, and the BRG Member ("**Co-Developer**") will provide to the Company (or any Subsidiary Entity that owns the Property) all development management services necessary to design, build and complete the Project as follows: (i) oversee Property acquisition; (ii) assemble the design team including project architect, MEP engineers and structural engineers, interior designer, and various other consultants; (iii) oversee the design professionals in the preparation of design development plans and construction drawings; (iv) incorporate environmentally sustainable goals in the design (to the extent possible); (v) work with the interior designer to layout apartments and select apartment finishes, fixtures, appliances and materials; (vi) prepare a Request for Proposal (RFP) to obtain bids for construction management services, analyze proposals in the selection of the construction manager; (vii) negotiate a construction contract with the construction manager that will include a Guaranteed Maximum Price; (viii) value engineer the Project; (ix) oversee the completion of the construction documents prepared by the design team, and coordinate a bid package for the construction manager to send out for pricing to the subcontractors and for preparation of a Guaranteed Maximum Price; (x) oversee the selection and contract negotiations with all subcontractors; (xi) negotiate all contracts with consultants; (xii) select an insurance broker/consultant to secure adequate insurance for the Project; (xiii) oversee the start-up and commissioning of all mechanical systems of the building; and (xiv) engage a marketing consultant to oversee the initial lease-up and coordinate marketing efforts.

(b) Developer will assign Russell C. Albanese, Christopher V. Albanese, Jack C. Becker, Robert J. Franco, Lydia Rapillo and/or Michael A. Ritz (collectively "**ADC Executives**") to provide executive oversight on behalf of Developer, and Co- Developer will assign Thomas A. Berkenkamp and/or Mark Schaevitz (collectively "**BRG Executives**") to provide executive oversight on behalf of Co-Developer. Developer will also provide an on-site project manager, a project administrator, and part-time allocation of one project executive and one project accountant (collectively, "**Project Staff**") to assist the Developer in the performance of the services set forth in subparagraph (a) of this Section. Developer anticipates that the on-site project manager and the project administrator will not be full-time positions initially, and that those positions will increase to full-time as design and construction of the Project progresses. Project Staff shall not include any ADC Executives.

(c) In consideration of Developer's and Co-Developer's performance of the services set forth in subparagraph (a) of this Section, the Company (or any Subsidiary Entity that owns the Property) shall pay Developer and Co-Developer a development fee in the aggregate amount of $3,500,000 or such lesser amount approved by the lender making the Construction Loan (the "**Development Fee**") which shall be payable 50% to Developer and 50% to Co-Developer in eighteen (18) equal monthly installments commencing on the first day of the month following the month in which the Construction Loan closes and on the first day of each month thereafter until the Development Fee is paid in full; *provided, however*, prior to the performance of the services contemplated by subparagraph (a) of this Section, upon the request of its respective affiliated Member, Developer and/or Co-Developer may elect to waive all or a portion of its right to receive

the unpaid portion of the Development Fee in favor of a profits interest in the Company issued to such affiliated Member in respect of the foregone amount (a "**Waived Amount**") in order to satisfy such affiliated Member's obligation to make an Additional Capital Contribution requested to be made pursuant to Section 3.2 after the closing of the Construction Loan, *provided, further*, any such waiver election shall be accepted and given effect only to the extent the lender making the Construction Loan consents to the reallocation of the Waived Amount to other line items in the Approved Project Budget. The Managing Member shall make such adjustments to the Development Fee payable to Developer and Co-Developer as may be reasonably necessary to give effect to this subparagraph (c).

(d) Notwithstanding any provision to the contrary contained in this Agreement, in the event of an effective waiver election by a Member pursuant to Section 5.7(c), those Members with Waived Amounts shall be entitled to distributions generally in accordance with Article 4 in respect of the Waived Amount (determined as if Waived Amounts were Additional Capital Contributions) and will be specially allocated (i) Profits and (ii) Gain on Disposition pursuant to Section 4.5 to the extent appropriate to reflect such distributions.

(e) In consideration of the Developer providing the services set forth in subparagraph (b) of this Section, the Company (or any Subsidiary Entity that owns the Property) shall reimburse to the Developer monthly an amount equal to the Reimbursable Salary Costs for all Project Staff providing services with respect to the Project on and after the date hereof, commencing on the first day of the first month after the date hereof, and continuing on the first day of each month thereafter until a final certificate of occupancy for the Project is issued by the applicable municipal authority and all punch list items are complete, for services provided by Project Staff with respect to the Project during the previous month. Neither Developer nor Co-Developer shall be reimbursed for the cost of the services provided by ADC Executives or BRG Executives and any such costs shall be borne by Developer and Co-Developer, respectively.

(f) The Company shall maintain a field office in Harrison, New Jersey for use by the Developer and Co-Developer. Initially, the Developer and the Co-Developer shall utilize as its field office the space being leased by Berkenkamp Realty Group, LLC ("**Berkenkamp**") located at 307 Frank E. Rodgers Boulevard South, Harrison, New Jersey (the "**Primary Field Office**"), and shall reimburse Berkenkamp or pay for the cost of maintaining the Primary Field Office, including, but not limited to, rent expense, utilities, office supplies, postage, insurance and parking for ADC Executives, BRG Executives and Project Staff, commencing on the first day of the first month after the date hereof and continuing through the Stabilization Date. In the event that the Company determines that additional space is required for use as a field office, the Company may rent on-site trailers or comparable accommodations in addition to the Primary Field Office and pay the costs therefor.

Section 5.8 Property Management, Asset Management and Leasing.

(a) The Members agree that, so long as the Albanese Member is not a Defaulting Member, American Realty & Management, Inc. ("**ARM**"), an Affiliate of the Albanese Member,

will have the option to provide day to day property management services for the Property after the completion of the construction of the Project. If ARM elects to provide property management services, the Company (or any Subsidiary Entity that owns the Property) shall enter into an agreement mutually acceptable to it and ARM, providing, among other things, for the payment to ARM of a monthly property management fee commencing on the Substantial Completion Date and each month thereafter: (i)(A) for the period prior to the Stabilization Date, an amount equal to the Monthly Minimum and (B) for the period on and after the Stabilization Date, an amount equal to 2.5% of Gross Receipts collected with respect to the Property during the previous month, *plus* (ii) the reimbursement to ARM of an amount equal to the Reimbursable Salary Costs for its employees providing on-site property management services for the Property during such previous month (collectively, the "**Property Management Fee**"). The Property Management Fee shall be paid monthly with respect to the gross income collected and Reimbursable Salary Costs attributable to the immediately preceding calendar month.

(b) The Members agree that the Managing Member has delegated to ARM the obligation to perform the asset management services for the Property described in this Agreement to be provided by the Managing Member, including the preparation of the Annual Budget, business planning, accounting, tax return filings, financial reporting and financial planning. The Company shall pay ARM a monthly asset management fee commencing on the Substantial Completion Date and each month thereafter: (i) for the period prior to the Stabilization Date, an amount equal to the greater of (A) $4,166.67 per month or (B) 1% of Gross Receipts collected with respect to the Property during the previous month and (ii) for the period on and after the Stabilization Date, an amount equal to 1% of Gross Receipts collected with respect to the Property during the previous month (the "**Asset Management Fee**"). The Asset Management Fee shall be paid monthly with respect to the gross income collected during the immediately preceding calendar month. The delegation of obligations to ARM, and ARM's entitlement to provide the corresponding services and receive the Asset Management Fee, under this Section 5.8(b) shall terminate at such time as the Albanese Member is a Defaulting Member.

(c) The Members agree that, so long as the Albanese Member is not a Defaulting Member, ARM will have the option to serve as the exclusive leasing agent for the Property after the Stabilization Date. If ARM elects to serve in that capacity, the Company (or any Subsidiary Entity that owns the Property) shall enter into an agreement mutually acceptable to it and ARM, providing, among other things, for the payment to ARM of a market rate leasing commission and reimbursements for all residential leases entered into after the Stabilization Date (the "**Leasing Fee**"). The Leasing Fee shall be paid monthly with respect to all lease entered into by the Company (or any Subsidiary Entity that owns the Property) during the immediately preceding calendar month.

(d) The Property Management Fee, Asset Management Fee, Leasing Fee and Reimbursable Salary Costs (collectively, the "**Services Fees and Costs**") shall be subject to adjustment every two (2) years at the time of the approval of the Annual Budget. In the event that a Member reasonably believes that one or more of the Services Fees and Costs is no longer commercially reasonable and competitive in light of the terms that could be obtained in a similar arrangement with a qualified, unaffiliated third party, the Members shall engage in good faith

discussions to agree upon an appropriate adjustment to the Services Fee(s) and Cost(s) in question. If they cannot agree, the Members will through a bid process or other mutually acceptable manner ascertain the then market rates for the Service Fee(s) and Cost(s) in question and adjust such Service Fee(s) and Cost(s) accordingly. Any adjustment to the Service Fee(s) and Cost(s) in accordance with this Section 5.8(d) will be memorialized in an amendment to this Agreement, as well as an amendment to any agreements between the Company and ARM which are affected by the adjustment.

Section 5.9 Exculpation and Indemnification.

(a) No Member, Authorized Representative of a Member or Affiliate of a Member or any shareholder, partner, member, trustee, fiduciary, director, officer, manager, employee or agent of a Member or an Affiliate of a Member (each an "**Exculpated Person**"), shall be liable to the Company or to the other Members for damages or otherwise with respect to any actions or failures to act taken or not taken relating to the Company, except to the extent any related loss results from gross negligence, willful misconduct, fraud or bad faith on the part of the Exculpated Person in connection with the business of the Company or the breach by the Exculpated Person of any obligation or responsibility under this Agreement.

(b) Each Member, each Authorized Representative of a Member and each Affiliate of a Member and each shareholder, partner, member, trustee, fiduciary, director, officer, manager, employee or agent of a Member and an Affiliate of a Member (each an "**Indemnified Person**"), shall be indemnified, defended and held harmless by the Company from any claim, demand, loss, damage, liability or expense, including reasonable fees and expenses of counsel and other professionals, incurred by the Indemnified Person by reason of or arising out of: (i) the activities of the Indemnified Person on behalf of the Company or in furtherance of the interests of the Company, (ii) the status of the Indemnified Person as a Member, manager, representative, employee, officer or agent of the Company or (iii) the Company's assets, property, business or affairs (including, without limitation, any actions or omissions of the Indemnified Person), if the acts or omissions were not performed or omitted as a result of gross negligence, willful misconduct, fraud or bad faith by the Indemnified Person or as a result of the willful breach of any obligation under this Agreement by the Indemnified Person.

Section 5.10 Dispute Resolution; Sale of Membership Interest or Property.

(a) **Deadlock**. If the Members do not agree on any Major Decision after a meeting of the Members pursuant to Section 5.3, any Member (the "**Initiating Member**") may request of the other Member (the "**Recipient Member**") pursuant to written notice (the "**Decision Notice**") delivered to the Recipient Member, that the Recipient Member consent to any Major Decision specified in the Decision Notice that is desired by the Initiating Member to be taken by the Company or by the Members pursuant to the provisions of Section 5.3. A deadlock between the Members shall exist and the Initiating Member may initiate the provisions of subparagraph (b) of this Section if: (i) the Recipient Member delivers to the Initiating Member its written objection to the Major Decision desired to be taken by the Initiating Member set forth in the Decision Notice, (ii) the

Recipient Member does not deliver to the Initiating Member its written consent to the Major Decision desired to be taken by the Initiating Member set forth in the Decision Notice within thirty (30) days after the Recipient Member receives the Decision Notice or (iii) the Recipient Member having consented to the Major Decision desired to be taken by the Initiating Member, fails to comply with such Major Decision within five (5) business days from the date of receipt of written notice from the Initiating Member requesting that the Recipient Member comply with the Major Decision theretofore consented to by the Members (the date that a deadlock shall first exist pursuant to clause (i), (ii) or (iii) is herein referred to as the "**Deadlock Date**").

(b) **Dispute Resolution**.

(i) On or after the Deadlock Date, the Initiating Member may, subject to the provisions of subparagraph (b)(iv) of this Section, initiate a deadlock breaking mechanism upon written notice (the "**Option Notice**") to the Recipient Member, giving the Recipient Member the option to elect to either: (1) agree to the Major Decision desired to be taken by the Initiating Member set forth in the Decision Notice, (2) purchase the entire Membership Interest owned by the Initiating Member for the Applicable Purchase Price or (3) authorize the Initiating Member to sell the Property on behalf of the Company (or the Subsidiary Entity that owns the Property) in a bona fide transaction to a third party purchaser that is not an Affiliate of a Member at a purchase price (net of brokerage commissions) that is no less than the Stated Asset Value.

(ii) The Option Notice shall specify: (1) the Major Decision desired to be taken by the Initiating Member set forth in the Decision Notice as to which there is a deadlock, (2) the Stated Asset Value determined by the Initiating Member, (3) the name and address of the attorney for the Initiating Member that will hold in escrow any Deposit Amount that may be delivered by the Recipient Member pursuant to subparagraph (b)(iii) below (the "**Escrow Agent**") and (4) the computation of the Applicable Purchase Price for the purchase of the Membership Interest of the Initiating Member, assuming for purposes of this clause (4) only that the Determination Date is the last day of the calendar month preceding the calendar month in which the Deadlock Date occurs, or if the Deadlock Date is the last day of a calendar month, the date on which the Deadlock Date occurs.

(iii) The Recipient Member shall have the right to elect to accept any offer made in the Option Notice by delivering to the Initiating Member written notice of the exercise of the option contained in subparagraph (b)(i)(1), (b)(i)(2) or (b)(i)(3) of this Section (the "**Election Notice**") within one hundred twenty (120) days after receipt of the Option Notice. If the Recipient Member delivers the Election Notice to the Initiating Member within the time period herein required and elects to exercise the option contained in subparagraph (b)(i)(1) above, the deadlock shall be broken and the Recipient Member shall be deemed to have consented to the Major Decision desired to be taken by the Initiating Member specified in the Option Notice. If the Recipient Member delivers the Election Notice to the Initiating Member within the time period herein required and elects to exercise the option contained in subparagraph (b)(i)(2) above, the Recipient Member shall (1) simultaneously with the delivery of the Exercise Notice, deliver to the Escrow Agent an official bank check drawn on or by any bank licensed to do business in the State of New York or New Jersey

made payable to the Escrow Agent as escrow agent in an amount equal to ten (10%) percent of the Applicable Purchase Price set forth in the Option Notice (the "**Deposit Amount**") which shall be held in escrow by the Escrow Agent in accordance with the provisions of this Section and (2) purchase the Membership Interest of the Initiating Member in accordance with the provisions of subparagraph (c) of this Section. If the Recipient Member delivers the Election Notice to the Initiating Member within the time period herein required and elects to exercise the option contained in subparagraph (b)(i)(3) above, the Recipient Member shall be deemed to have authorized the Initiating Member to sell the Property on behalf the Company (or the Subsidiary Entity that owns the Property) in accordance with the provisions of subparagraph (d) of this Section. If the Recipient Member fails to deliver the Election Notice to the Initiating Member within the time period herein required or delivers the Election Notice to the Initiating Member within the time period herein required and purports to elect to exercise the option contained in subparagraph (b)(i)(2) above, but does not deliver the Deposit Amount to the Escrow Agent as herein required, then the deadlock shall be broken and the Recipient Member shall be deemed to have consented to the Major Decision desired to be taken by the Initiating Member specified in the Option Notice.

(iv) If the provisions of this subparagraph (b) are not initiated by the delivery of the Option Notice as herein provided within ninety (90) days after the Deadlock Date, any deadlock between the Members arising under the circumstances described in clause (i) or (ii) of subparagraph (a) of this Section shall not be broken and the action desired to be taken by the Initiating Member specified in the Decision Notice shall not be considered again by the Members without first complying with the provisions of subparagraph (a) of this Section and presenting the matter to the Members at a meeting held in accordance with the provisions of Section 5.3.

(c) **Sale of Membership Interest**.

(i) If, in accordance with the provisions of subparagraph (b)(iii) of this Section, the Recipient Member elects to purchase the Membership Interest of the Initiating Member, the closing of the sale of the Membership Interest of the Initiating Member shall take place within ninety (90) days after delivery of the Election Notice to the Initiating Member or such longer period of time agreed to in writing by the Members (the "**Closing Period**"), and the Recipient Member shall purchase the Membership Interest of, and pay an amount equal to the balance of the Applicable Purchase Price over and above the Deposit Amount to, the Initiating Member at the closing, together with interest on the Deposit Amount at the Interest Rate for the period from the day after the Determination Date to the day before the closing, both dates inclusive (but *excluding* interest on any distributions received by the Initiating Member after the Determination Date, from and after the date of receipt of such distribution), in cash by wire transfer of immediately available federal funds to the account designated by the Initiating Member, or by official check drawn on or by any bank licensed to do business in the State of New York or New Jersey. Also, at the closing: (1) the Recipient Member shall execute and deliver to the Initiating Member a document (in form and substance reasonably satisfactory to the Initiating Member) indemnifying the Initiating Member from and against any and all personal liabilities and obligations with respect to debts of the Company or any Subsidiary Entity, (2) the Members shall cause any loans made by the Initiating Member or an Affiliate of the Initiating Member to the Company, or by the Company to the Initiating Member or an

Affiliate of the Initiating Member, together with interest accrued thereon, to be repaid, (3) the Members shall cause any lender of the Company or any Subsidiary Entity to whom the Initiating Member or any Affiliate of the Initiating Member has provided any guaranty and/or collateral, to release the Initiating Member or such Affiliate from such guaranty and to release such collateral and (4) the Initiating Member shall pay all transfer or similar taxes imposed by any governmental authority in connection with the transfer of its Membership Interest pursuant to this Section. If the Initiating Member shall have received any distributions from the Company pursuant to Section 4.1 (other than pursuant to subparagraphs (a) and (b) thereof) after the Determination Date and on or before the date of the closing, the total amount thereof shall be credited against the Applicable Purchase Price payable by the Recipient Member at the closing. At the closing, the Initiating Member shall execute and deliver all deeds, assignments, and other instruments as may be reasonably required to vest in the Recipient Member or in the Recipient Member's nominee or assignee, the entire Membership Interest of the Initiating Member, free and clear of all liens and encumbrances thereon. At the closing of the sale and purchase of the Membership Interest, the Escrow Agent shall pay the Deposit Amount, together with interest thereon, to the Initiating Member and shall thereupon be released of any further obligations hereunder.

(ii) If (1) the sale of the Membership Interest of the Initiating Member to the Recipient Member requires the consent of any lender of the Company or any Subsidiary Entity and such consent is not obtained by either the Initiating Member or the Recipient Member within thirty (30) days after the delivery of the Election Notice to the Initiating Member or such longer period of time agreed to in writing by the Members or (2) the Initiating Member or any Affiliate of the Initiating Member has provided any guaranty and/or collateral to any such lender and the lender refuses, within thirty (30) days after the delivery of the Election Notice to the Initiating Member or such longer period of time agreed to in writing by the Members, to agree to release the Initiating Member or such Affiliate from such guaranty and to release such collateral, the Recipient Member shall not be obligated to purchase in the case of clause (1) above and the Initiating Member shall not be obligated to sell in the case of clause (2) above, the Membership Interest of the Initiating Member pursuant to this Section. If in the case of clause (1) above, the Recipient Member does not elect to proceed with the purchase of the Membership Interest of the Initiating Member upon written notice to the Initiating Member given within five (5) business days after the expiration of the period described in clause (1) above, or in the case of clause (2) above, the Initiating Member does not elect to proceed with the sale of its Membership Interest upon written notice to the Recipient Member given within five (5) business days after the expiration of the period described in clause (2) above, then the Recipient Member shall be deemed to have elected to exercise the option contained in subparagraph (b)(i)(3) above and authorized the Initiating Member to sell the Property on behalf the Company (or the Subsidiary Entity that owns the Property) in accordance with the provisions of subparagraph (d) of this Section. Any fees imposed by any such lender to obtain its consent to the sale of the Membership Interest of the Initiating Member, shall be paid by the Company and considered an obligation of the Company in determining the Applicable Purchase Price. If the Recipient Member purchases the Membership Interest of the Initiating Member notwithstanding the refusal of a lender to provide the releases described in clause (2) above, at the closing of the sale and purchase of the Membership Interest of the Initiating Member, the Recipient Member shall execute and deliver to the Initiating Member an agreement (in form and substance reasonably satisfactory to

the Initiating Member) to indemnify, defend and hold harmless the Initiating Member and all other Persons who or whose assets may be adversely affected by the lender's failure to provide such releases.

(iii) If the Recipient Member shall default in consummating the purchase of the Membership Interest of the Initiating Member in accordance with the provisions of subparagraph (c) of this Section, the Initiating Member shall have the following remedies, which shall constitute the sole remedies available to the Initiating Member with respect to such default:

(1) the deadlock shall be broken and the Recipient Member shall be deemed to have consented to the Major Decision desired to be taken by the Initiating Member specified in the Option Notice; and

(2) the Initiating Member may elect to purchase the Membership Interest of the Recipient Member within ninety (90) days after the expiration of the Closing Period by delivering to the Recipient Member written notice thereof (the date of delivery of such notice is herein referred to as the "**Election Date**"), in which event the sale of the Membership Interest of the Recipient Member to the Initiating Member shall occur within one hundred twenty (120) days after the Election Date on the same terms and conditions set forth in subparagraph (c)(i) of this Section as if the Initiating Member is the purchasing Member and the Recipient Member is the selling Member hereunder; *except that* in lieu of the Applicable Purchase Price for the Membership Interest of the Recipient Member, the Initiating Member shall pay the Recipient Member an amount equal to ninety (90%) percent of such Applicable Purchase Price; and, *except further* that the Closing Period shall be deemed to refer to one hundred twenty (120) days after the Election Date and that if the Recipient Member shall default in consummating the sale of its Membership Interest to the Initiating Member within said 120-day period, the Initiating Member shall have the right to have the provisions of subparagraph (c)(i) of this Section, as modified by this clause (2), specifically enforced by order of any court having jurisdiction; and

(3) if the Initiating Member does not elect to proceed with the remedy described in clause (2) above, the Initiating Member shall be entitled retain the Deposit Amount as and for liquidated damages, and upon the Initiating Member's request the Escrow Agent shall pay the Deposit Amount to the Initiating Member.

(iv) If the Initiating Member shall default in consummating the sale of its Membership Interest to the Recipient Member in accordance with the provisions of subparagraph (c) of this Section, the Recipient Member shall have the following remedies, which shall constitute the sole remedies available to the Recipient Member with respect to such default:

(1) the deadlock shall not be broken and the Major Decision desired to be taken by the Initiating Member specified in the Option Notice shall not be considered again by the Members without first complying with the provisions of

subparagraph (a) of this Section and presenting the matter to the Members at a meeting held in accordance with the provisions of Section 5.3; and

(2) the Recipient Member shall have the right to have the provisions of subparagraph (c)(i) of this Section specifically enforced by order of any court having jurisdiction; *except that* in lieu of the Applicable Purchase Price for the Membership Interest of the Initiating Member, the Recipient Member shall have the right to compel the Initiating Member to sell its Membership Interest for an amount equal to ninety (90%) percent of such Applicable Purchase Price; and

(3) if the Recipient Member does not elect to proceed with the remedy described in clause (2) above, the Recipient Member may elect to terminate its agreement to purchase the Membership Interest of the Initiating Member pursuant to subparagraph (c)(i) above upon written notice to the Initiating Member and the Escrow Agent, whereupon the Escrow Agent shall promptly return the Deposit Amount to the Recipient Member.

(d) **Sale of Property**.

(i) If, in accordance with the provisions of subparagraph (b)(iii) or subparagraph (c)(ii) of this Section, the Recipient Member is deemed to have authorized the Initiating Member to sell the Property, then the Initiating Member shall have the right to cause the Company (or the Subsidiary Entity that owns the Property) to sell the Property in a bona fide transaction to a third party purchaser that is not an Affiliate of either Member at a purchase price (net of brokerage commissions) that is no less than the Stated Asset Value.

(ii) If a purchase and sale agreement for the sale of the of the Property complying with the provisions of this subparagraph (d) (the "**Sale Contract**") is not executed by both the Company and a third party purchaser that is not an Affiliate of either Member within (A) one hundred twenty (120) days after the delivery of the Election Notice, in the case of the Recipient Member electing to exercise the option in subparagraph (b)(i)(3) of this Section or (B) one hundred eighty (180) days after the delivery of the Election Notice, in the case of the Recipient Member being deemed to have elected to exercise the option in subparagraph (b)(i)(3) of this Section pursuant to the provisions of subparagraph (c)(ii) of this Section (each a "**Sale Period**"), then the Initiating Member's right to require the Company to sell the Property shall terminate upon the expiration of the Sale Period and the Initiating Member shall not have the right to again implement the provisions of this Section to break a deadlock among the Members with respect to any Major Decision for a period of one year from the expiration of the Sale Period. If a Sale Contract is executed by both the Company and a third party purchaser that is not an Affiliate of either Member prior to the expiration of the Sale Period, the Company shall send written notice thereof to the Members accompanied by a copy of the fully executed Sale Contract.

(iii) In addition to complying with the provisions of subparagraph (d)(i) above, the Sale Contract shall provide for (1) the payment into escrow by the third party purchaser of

a deposit of no less than five (5%) percent of the purchase price set forth in the Sale Contract, (2) the closing of title to the Property to take place no later than ninety (90) days from the date that the Sale Contract was executed by the purchaser and (3) such other terms as are customary in Hudson County, New Jersey in the sale of residential property similar to the Property.

(iv) In connection with the sale of the Property, the Members shall undertake all reasonable and customary steps and actions to facilitate the consummation of the sale on terms that are customary and reasonable for similar transactions, including, but not limited to, the release to the purchaser of information and documents pertinent to the operation and management of the Property, the execution and delivery to said purchaser of instruments and agreements reasonably required to provide the representations, warranties, indemnities and escrow agreements that are customarily provided in similar transactions and, if requested by the purchaser, the structuring of the transaction as a sale of the Membership Interests of the Members provided such structure would provide substantially the same economic results and legal exposure to the Members as a sale of the Property by the Company.

(v) If the Company or the Members are required to provide any representations or indemnities in connection with the sale of the Property, then each Member shall not be liable for more than its respective pro rata liability for any misrepresentation or indemnity and said pro rata liability shall not exceed the total portion of the purchase price for the Property received by the respective Member; *provided, however,* each Member shall be solely liable with respect to any misrepresentation and associated indemnity obligation regarding any representations and indemnities relative to the Membership Interest of such Member or such Member's right, power and authority to enter into the Sale Contract without violating any agreement or legal requirement to which such Member is a party or by which it is bound.

(vi) If a Sale Contract is not executed by both the Company and a third party purchaser that is not an Affiliate of either Member prior to the expiration of the Sale Period or if a Sale Contract is executed by said parties within the Sale Period but is thereafter terminated for any reason other than the default of the Company, then the Initiating Member shall pay all reasonable third-party expenses incurred by the Company in connection therewith to the extent the same exceeds any amount retained by the Company under the Sale Contract as liquidated damages.

(e) The rights of the Initiating Member described in this Section in the case where the Recipient Member fails to comply with any action consented to or deemed to have been consented to by the Recipient Member after written request by the Initiating Member, shall be in addition to, and not in lieu of, any other remedies available to the Initiating Member by law or under the provisions of this Agreement.

(f) Once the procedure set forth in this Section has been commenced by the Initiating Member's delivery of the Decision Notice to the Recipient Member, no Member may commence the procedure set forth in (i) this Section with respect to any other Major Decision desired by the Member to be taken by the Company or the Members or (ii) Section 5.11, until the procedure

set forth in this Section with respect to the Major Decision desired to be taken by the Initiating Member specified in the Decision Notice has been exhausted or consummated as herein provided.

(g) Notwithstanding anything to the contrary contained in this Section, the procedure set forth in this Section may not be initiated by either Member prior to the Stabilization Date.

(h) In the event the Initiating Member is the Non-Managing Member, the Managing Member shall, notwithstanding anything to the contrary contained in this Agreement, take all actions, provide all information and execute and deliver all documents on behalf of the Company as reasonably requested by the Initiating Member to enable the Initiating Member to engage a broker, effectuate a sale of the Property, and to exercise all rights intended to be conferred on the Initiating Member pursuant to subparagraph (d) of this Section. The Managing Member shall indemnify, defend and hold harmless the Company and the Non-Managing Member from and against any and all loss or expense, including reasonable attorneys' fees and expenses, incurred or suffered by the Company or the Non-Managing Member based upon, arising out of, in connection with or by reason of the breach by the Managing Member of the covenants set forth in this subparagraph.

(i) All time periods set forth in this Section shall be of the essence unless extended by the Members.

(j) The provisions of this Section 5.10 shall be subject to specific enforcement as provided for in Section 9.3 below.

Section 5.11 Sale of Membership Interest or the Property. Notwithstanding any provision of Section 5.2 or 5.3 to the contrary, at any time after the expiration of five (5) years after the Stabilization Date, a Member or any holder of an Economic Interest (the "**Selling Member**") may, without the consent of any other Member (the "**Other Member**"), initiate a process to sell the entire Membership Interest of the Selling Member or to cause the Company (or any Subsidiary Entity that owns the Property) to sell the Property, using the procedure specified in Section 5.10 by the Selling Member delivering to the Other Member the Option Notice specifying the options set forth in Sections 5.10(b)(i)(2) and 5.10(b)(i)(3). For purposes of applying the procedure specified in Section 5.10, the provisions of Section 5.10 relating to a Major Decision or a deadlock relating to a Major Decision shall be disregarded and references in Section 5.10 to the Initiating Member and Recipient Member shall be deemed to refer to the Selling Member and the Other Member, respectively. In the event the Property is to be marketed and sold pursuant to this Section 5.11, each Member shall cooperate fully and unconditionally with, and not impede in any way, the marketing and sales efforts of the Selling Member.

Section 5.12 Organization Expenses. The Members hereby acknowledges that the Albanese Member has engaged the law firm of Albanese & Albanese LLP, and the BRG Member has engaged the law firm of Chiesa Shahinian & Giantomasi PC, in connection with the preparation of this Agreement, and agree that all reasonable legal fees incurred by each Member with respect thereto shall be paid by the Company.

ARTICLE 6
TRANSFER OF INTERESTS AND WITHDRAWAL OF MEMBERS

Section 6.1 Transfers.

(a) Subject to the provisions of Section 6.4 hereof and except as may be otherwise approved by the Members in accordance with the provisions of Article 5 of this Agreement, no Member may Transfer all, or any portion of, or any interest or rights in, the Membership Interest owned by the Member prior to the dissolution and winding up of the Company. For purposes of this Section 6.1, a Transfer, directly or indirectly, of any beneficial interest in a Member shall be deemed a Transfer of the Membership Interest of such Member. Each Member hereby acknowledges the reasonableness of the prohibition set forth in this Section 6.1 in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Interests, including Economic Interests, in violation of the prohibition contained in this Section 6.1 shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Interests are attempted to be transferred, or any Member whose beneficial interests are attempted to be transferred, directly or indirectly, in violation of this Section 6.1, shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company, or have any other rights in or with respect to the Membership Interests.

(b) Upon the Transfer or deemed Transfer of all, or any portion of, or any interest or rights in, the Membership Interest of a Member, approved by the Members pursuant the provisions of this Section, the transferee of such Member, or the Member with respect to which a Transfer of its entire Membership Interest shall be deemed to have occurred, as the case may be, shall not have (or shall no longer have) the rights of a Member hereunder but shall only possess the rights to its Economic Interest, unless simultaneously with such approval by the Members: (i) in the case of a Transfer of all, or any portion of, the Membership Interest of a Member to a transferee, the Members authorize the transferee to become a Member, in which event the transferee shall be admitted to the Company as a Member, provided that such transferee executes and delivers to the Company a counterpart of this Agreement thereby agreeing to the restrictions and liabilities of a Member under this Agreement and to be liable for the unfulfilled obligations of the predecessor of the Membership Interest to such transferee to make Capital Contributions in accordance with this Agreement with respect to the portion of the Membership Interest transferred to such transferee, or (ii) in the case of a deemed Transfer of the Membership Interest of a Member, the Members authorize such Member to retain the rights and obligations of a Member hereunder.

Section 6.2 Voluntary Withdrawal. Except as may be otherwise approved by the Members in accordance with the provisions of Article 5 of this Agreement, the Voluntary Withdrawal of a Member from the Company is prohibited prior to the dissolution and winding up of the Company. Each Member hereby acknowledges the reasonableness of the prohibition set forth in this Section 6.2 in view of the purposes of the Company and the relationship of the Members. Any Voluntary Withdrawal in violation of the prohibition contained in this Section 6.2 shall be deemed invalid, null and void, and of no force or effect except as otherwise provided under the Act, and shall

entitle the Company to damages for breach, which may be offset against the amounts otherwise distributable to such Member.

Section 6.3 Involuntary Withdrawal.

(a) Immediately upon the occurrence, or deemed occurrence, of an Involuntary Withdrawal of a Member (the "**Withdrawn Member**"), the rights of the Withdrawn Member or the successor to the Economic Interest of the Withdrawn Member, as the case may be, to participate as a member in the management and conduct of the Company's activities shall terminate, including all voting rights theretofore associated with its Membership Interest and the right to vote on or approve any Major Decision other than Select Major Decisions; *provided, however,* if the successor is a member of the Albanese Group or the BRG Group, upon the Transfer of the Economic Interest of the Withdrawn Member to the successor, the successor shall automatically be admitted to the Company as a Member with all associated rights, including voting rights, provided that the successor executes and delivers to the Company a counterpart of this Agreement thereby agreeing to the restrictions and liabilities of a Member under this Agreement and to be liable for the unfulfilled obligations of the Withdrawn Member to make Capital Contributions in accordance with this Agreement. For purposes of this Section 6.3, the occurrence of any of the events described in clauses (i) through (xii) of the definition of the term "Involuntary Withdrawal" set forth in Exhibit A to any Person (the "**Withdrawn Person**") who owns, directly or indirectly, any beneficial interest in a Member or who controls, directly or indirectly, a Member, shall be deemed the occurrence of an Involuntary Withdrawal of the Member; *provided, however,* no Involuntary Withdrawal of the Member shall be deemed to have occurred if (i) the Member is an Albanese Member or a BRG Member after the occurrence of any of the enumerated events to a Withdrawn Person or (ii) one or more of the events described in clause (viii) of the definition "Involuntary Withdrawal" has occurred as to Russell C. Albanese or Christopher V. Albanese, but not both, in the case of the Albanese Member, or has occurred as to Thomas Berkenkamp or Mark Schaevitz, but not both, in the case of the BRG Member. Upon the occurrence or deemed occurrence of an Involuntary Withdrawal of a Member, the Withdrawn Member, the successor of the Economic Interest of the Withdrawn Member or the Member with respect to which an Involuntary Withdrawal shall be deemed to have occurred, as the case may be, shall retain (A) the rights to its Economic Interest and the right to inspect the Company's books and records at the principal office of the Company at reasonable times and upon reasonable prior notice to the Managing Member and (B) the rights of a Member set forth in Section 5.11.

(b) Notwithstanding the provisions of subparagraph (a) of this Section, an Involuntary Withdrawal of the Albanese Member by reason of the occurrence of one or more of the events described in clause (viii) of the definition "Involuntary Withdrawal" as to both Russell C. Albanese and Christopher V. Albanese, shall not be deemed to have occurred if (i) the Albanese Member has designated one or more Authorized Representatives who are familiar with the Project and have experience with commercial real estate developments similar to the Project and (ii) the Albanese Member shall have delegated its rights, powers and duties to manage and control the business and affairs of the Company to Albanese Organization, Inc. ("**AO**") or any of its subsidiaries and AO and/or its subsidiaries continues to be actively engaged in the development and management

of real estate in the New York-New Jersey-Connecticut area; in which event, the Albanese Member shall retain its rights to participate as a member in the management and conduct of the Company's activities pursuant to the provisions of this Agreement, including its rights as Managing Member hereunder (or as Non-Managing Member if the Albanese Member was theretofore removed as Managing Member pursuant to the provisions of this Agreement).

(c) Notwithstanding the provisions of subparagraph (a) of this Section, an Involuntary Withdrawal of the BRG Member by reason of the occurrence of one or more of the events described in clause (viii) of the definition "Involuntary Withdrawal" as to both Thomas Berkenkamp and Mark Schaevitz shall not be deemed to have occurred if the BRG Member has designated Marla Smith as an Authorized Representative.

Section 6.4 Permitted Transfers.

(a) Notwithstanding the provisions of Section 6.1 hereof, and subject to the provisions of subparagraph (c) of this Section, an Albanese Member may at any time and from time to time, Transfer all (but not a portion) of the Membership Interest of the Albanese Member to a member of the Albanese Group, and any owner of a direct or indirect beneficial interest in a Member that is an Albanese Member may at any time and from time to time, Transfer all or any portion of, or rights in, such beneficial interest, *provided that* immediately after such Transfer, such Member continues to be an Albanese Member. Upon the effective date of any Transfer of the Membership Interest of an Albanese Member permitted pursuant to this subparagraph (a), the transferee shall automatically be admitted to the Company as a Member, provided that the transferee executes and delivers to the Company a counterpart of this Agreement thereby agreeing to the restrictions and liabilities of a Member under this Agreement and to be liable for the unfulfilled obligations of the transferor to make Capital Contributions in accordance with this Agreement. The Albanese Member shall promptly provide to the BRG Member documentation that describes the Transfer of the Membership Interest pursuant to this subparagraph (a) and evidences the compliance with the terms hereof.

(b) Notwithstanding the provisions of Section 6.1 hereof, and subject to the provisions of subparagraph (c) of this Section, a BRG Member may at any time and from time to time, Transfer all (but not a portion) of the Membership Interest of the BRG Member to a member of the BRG Group, and any owner of a direct or indirect beneficial interest in a Member that is a BRG Member may at any time and from time to time, Transfer all or any portion of, or rights in, such beneficial interest, *provided that* immediately after such Transfer, such Member continues to be a BRG Member. Upon the effective date of any Transfer of the Membership Interest of a BRG Member permitted pursuant to this subparagraph (b), the transferee shall automatically be admitted to the Company as a Member, provided that the transferee executes and delivers to the Company a counterpart of this Agreement thereby agreeing to the restrictions and liabilities of a Member under this Agreement and to be liable for the unfulfilled obligations of the transferor to make Capital Contributions in accordance with this Agreement. The BRG Member shall promptly provide to the

Albanese Member documentation that describes the Transfer of the Membership Interest pursuant to this subparagraph (b) and evidences the compliance with the terms hereof.

(c) Notwithstanding any provision set forth in this Section to the contrary, if the Transfer of the Membership Interest of an Albanese Member or a BRG Member permitted pursuant to this Section requires the consent of any lender of the Company or of any Subsidiary Entity and such consent is not obtained by either the transferor or the transferee of such Membership Interest, the Transfer of such Membership Interest shall not be permitted pursuant to this Section. Any fees imposed by any such lender to obtain its consent to the Transfer of a Membership Interest pursuant to this Section, shall be paid by the transferor and/or transferee of such Membership Interest prior to, or simultaneously with, the effective date of such Transfer.

(d) Notwithstanding any provision set forth in this Section to the contrary, no Transfer pursuant to this Section shall relieve the transferor from any duty or obligation owed to the Company or the other Members which occurred prior to the date of Transfer or shall constitute a waiver or release of claims with respect thereto.

Section 6.5 Additional Transfer Restrictions.

(a) No Member shall be permitted to Transfer any portion of its Membership Interest or take any other action which would cause the Company or any Pass-Through Entity to be (i) treated as a "publicly traded partnership" within the meaning of Code Section 7704 or (ii) classified as a corporation within the meaning of Code Section 7701(a).

(b) No Member shall be permitted to Transfer all or any portion of its Membership Interest or to take any other action (including, in the case of any Member which is a corporation, limited liability company or partnership or a partner or member of a partnership or limited liability company which is a Member, a Transfer of any interest in the corporation, limited liability company or partnership or in the shareholders, members or partners thereof) which would result in a termination of the Company or any Pass-Through Entity as a partnership within the meaning of Code Section 708(b)(1)(B) (a "**Tax Termination**"), without the approval of the Managing Member; *provided, however,* the provisions of this subparagraph shall not apply to any Transfer of the Membership Interests of the Members pursuant to Section 5.10 or Section 5.11.

(c) Unless arrangements concerning withholding are reasonably approved by the Managing Member (if any withholding is required of the Company), no Member shall be permitted to Transfer all or any portion of its Membership Interest to any Person, unless such Person is a United States Person as defined in Code Section 7701(a)(30) and is not subject to withholding of any federal tax.

(d) No Member shall be permitted to Transfer any portion of its Membership Interest or take any other action which would cause the Company to breach or be in violation of the Indemnity and Settlement Agreement, the Redevelopment Agreement or any other material agreement to which the Company is a party or by which its assets are bound.

ARTICLE 7
DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY

Section 7.1 **Events of Dissolution**. The Company shall be dissolved upon the happening of any of the following events:

(a) upon the affirmative vote or written consent of the Members in accordance with Article 5 of this Agreement; or

(b) upon the entry of a decree of judicial dissolution under of the Act.

Section 7.2 **Procedure for Winding Up and Distribution**. If the Company is dissolved, the Managing Member shall wind up the affairs of the Company, or if there is no Managing Member, the Liquidator shall wind up the affairs of the Company. On winding up of the Company, the assets of the Company (other than cash) shall be sold to third parties for cash and then all cash of the Company shall be distributed in accordance with Section 4.2 of this Agreement.

Section 7.3 **Timing Requirements of Treasury Regulations**.

(a) Notwithstanding anything in this Article 7 to the contrary, in the event the Company is "liquidated" within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g), distributions shall be made to the Members who have positive Capital Account balances pursuant to Section 4.2 in a manner that complies with Regulation Section 1.704-1(b)(2)(ii)(b)(2); *provided, however,* a liquidation occurring as a result of a Tax Termination shall not require an actual distribution of Company assets, but shall instead be treated as a constructive liquidation and reformation for tax purposes only in the manner required pursuant to Regulation Section 1.708-1(b).

(b) Any Member with a deficit balance in its Capital Account and who received distributions with respect to a Waived Amount must upon the liquidation of its Membership Interest have the unconditional obligation to restore (contribute) the amount of such deficit balance to the Company upon the later to occur of the end of the taxable year in which liquidation occurs or 90 days after the date of liquidation pursuant to Regulation Section 1.704-1(b)(2)(ii)(b)(3). Any contribution pursuant to this subparagraph (b) shall not be for the benefit of any third party.

Section 7.4 **Filing of Certificate of Dissolution**. If the Company is dissolved, the party or parties responsible for winding up the affairs of the Company as provided in Section 7.2 hereof, shall promptly file a Certificate of Dissolution with the office of the New Jersey Department of Treasury, Division of Revenue.

ARTICLE 8
BOOKS, RECORDS, ACCOUNTING, AND TAX ELECTIONS

Section 8.1 **Bank Accounts**. All funds of the Company shall be deposited in a bank account or accounts opened in the Company's name. The Managing Member shall determine the

institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

Section 8.2 Books and Records.

(a) The Managing Member shall keep or cause to be kept complete and accurate books and records of the Company as required under the Act, and under the Code and the Regulations, or by any governmental agencies having jurisdiction, as well as supporting documentation of transactions with respect to the conduct of the Company's business. The books and records shall be maintained in accordance with the income tax basis of accounting using the accrual method.

(b) The Company will also maintain the following records:

(i) a current alphabetized list of the names and addresses of all of the Members (including any successors to the Economic Interest of a Member), as well as the contribution and the share of profits and losses of each Member (including any successors to the Economic Interest of a Member) or information from which such share can be readily derived;

(ii) a copy of the Certificate of Formation and all amendments thereto or restatements thereof, together with executed copies of any powers of attorney pursuant to which any Certificate or Amendment has been executed;

(iii) a copy of this Agreement and any amendments thereto and any amended and restated Limited Liability Company Agreement for the Company; and

(iv) a copy of the Company's federal, state, and local income tax or information returns and reports, if any, for the three most recent fiscal years.

(c) The books and records maintained pursuant to this Section shall be available for examination by any Member, or the Member's duly authorized representatives, at the principal office of the Company at any and all reasonable times during normal business hours.

Section 8.3 Annual Accounting Period. The annual accounting period and taxable year of the Company shall be on a calendar year.

Section 8.4 Reports.

(a) Prior to the Stabilization Date, each Managing Member shall provide to the other Managing Member such information in the custody and control of such Member that the other Member shall request from time to time. On and after the Stabilization Date, the Managing Member shall provide to the Non-Managing Member (i) quarterly reports in a form reasonably satisfactory to the Non-Managing Member, (ii) quarterly unaudited financial updates relating to the Company, any Subsidiary Entity and the Property and (iii) such information in the custody and control of the Managing Member that the Non-Managing Member shall request from time to time. The Managing

Member shall meet with representatives of the Non-Managing Member from time to time upon the Non-Managing Member's request to discuss their comments and questions relating to the same, and shall update the Non-Managing Member from time to time upon Non-Managing Member's request via telephone or electronic mail with respect to any other matter affecting the Company, any Subsidiary Entity and the Property.

(b) Within seventy-five (75) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was a Member at any time during the taxable year then ended a complete accounting of the affairs of the Company for the taxable year then ended. In addition, within seventy five (75) days after the end of each taxable year of the Company, the Managing Member shall cause to be sent to each Person who was a Member at any time during the taxable year then ended, tax information concerning the Company which is necessary for preparing the Member's income tax returns for that year. At the request of any Member, and at the Member's expense, the Managing Member shall cause the Company's books and records to be audited by independent accountants for the period requested by the Member.

Section 8.5 **Tax Matters Member**. The Albanese Member, so long as it is a Managing Member (and if the Albanese Member is removed as a Managing Member, the successor Managing Member), shall be the Company's tax matters partner pursuant to Code Section 6231(a)(7) ("**Tax Matters Member**"). The Tax Matters Member shall have all powers and responsibilities provided in Code Section 6221, *et seq.*; *provided, however*, that the Tax Matters Member shall not enter into any settlement, release, compromise or other agreement with the Internal Revenue Service or any state or local tax authority without the prior approval of the other Members. The Tax Matters Member shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it relates to the Company. The Tax Matters Member shall not compromise any dispute with the Internal Revenue Service without the approval of the Members pursuant to Section 5.3 hereof.

Section 8.6 **Tax Classification Election**. The Managing Member does not have the authority to change the tax classification of the Company from a partnership to an association taxable as a corporation by filing, or causing to be filed, Internal Revenue Service Form 8832, Entity Classification Election, or any successor form thereto, without the approval of the Members pursuant to Section 5.3 hereof.

ARTICLE 9
GENERAL PROVISIONS

Section 9.1 **Assurances**. Each Member shall execute all certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Managing Member deems appropriate to comply with the requirements of law for the formation and operation of the Company

and to comply with any laws, rules, and regulations relating to the acquisition, operation, or holding of the property of the Company.

Section 9.2 **Notices**. Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a "**notice**") required or permitted under this Agreement must be in writing and either delivered personally or sent by certified or registered first class mail, postage prepaid, return receipt requested, recognized overnight courier providing a receipt against delivery or electronic mail. Any notice to be given hereunder by the Company shall be given by the Managing Member. A notice to a Member must be addressed to the Member at the Member's last known address on the records of the Company. A notice to the Company must be addressed to the Company's principal office. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees. Any notice hereunder shall be effective upon receipt.

Section 9.3 **Specific Performance**. The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, the Company as well as any party who may be injured (in addition to any other remedies which may be available to the Company or that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act which would constitute a breach or (ii) compelling the performance of any obligation which, if not performed, would constitute a breach.

Section 9.4 **Complete Agreement**. This Agreement constitutes the complete and exclusive statement of the agreement among the Members with respect to the subject matter hereof and supersedes all prior written and oral statements, including (i) any prior agreement, representation, statement, condition, or warranty made by or between the Members and (ii) the Original Operating Agreement. Except for the amendments specifically authorized pursuant to Section 3.3(b) or Article 4 hereof, this Agreement may only be amended with the approval of the Members in accordance with the provisions of Section 5.3.

Section 9.5 **Investment Representations**. Each Member hereby represents and warrants to the Company and each other Member as follows:

(a) Such Member acknowledges that:

(i) the Economic Interest owned by it has not been registered under the Securities Act of 1933, the State of New Jersey securities act or any other state securities laws (collectively, the "**Securities Acts**") because the Company is issuing (or a Member has transferred) such Economic Interest in reliance upon exemptions from the registration requirements contained in the Securities Acts for issuances not involving a public offering and based, in part, upon the representation of each Member hereto that such Member is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933;

(ii) the Company (or the transferor of an Economic Interest) has relied upon the fact that the Economic Interest is to be held by such Member for investment purposes only, and not with a view to any resale or distribution thereof; and

(iii) the Company is under no obligation to register or qualify the Economic Interest or to assist any Member in complying with any exemption from registration under the Securities Acts if such Member wishes to Transfer the Economic Interest.

(b) Each Member is acquiring the Economic Interest for his or its own account, for investment purposes only, and not with a view to the resale or distribution thereof, unless there are effective registrations or other qualifications relating thereto under applicable Securities Acts, or unless the Member delivers to the Company the opinion of counsel reasonably satisfactory to the Managing Member.

(c) Before acquiring the Economic Interest, each Member investigated the Company and its business, and the Company made available to it all information necessary to make an informed decision to acquire the Economic Interest, including without limitation, true, correct and complete copies of (i) the Acquisition Contract, (ii) the Redevelopment Agreement, (iii) the Indemnity and Settlement Agreement, (iv) the Settlement Agreement and all pleadings filed in the Lawsuit, (v) all reports in the possession or control of the Company relating to the environmental condition of the Property and the remediation thereof and (vi) all other agreements described in Exhibit G.

(d) Nothing contained in this Section is intended to be construed as an admission that any Economic Interest is a "security" for purposes of any of the Securities Acts or other applicable law.

Section 9.6 Confidentiality. Each Member (including, for purposes of this Section each employee, representative or other agent of such Member) hereby agrees that it shall not, directly or indirectly, knowingly divulge, furnish or make available to any third person, without each other Member's prior written consent, any confidential information concerning the arrangements set forth herein. Notwithstanding the foregoing, nothing herein shall prevent any Member from (a) responding to lawful subpoenas or court orders without each other Member's prior written consent; provided that each such other Member shall have been given prior written notice of any such subpoena promptly following receipt thereof, (b) disclosing any confidential information to the extent such disclosure is required by any regulatory authority, self-regulatory organization, law or regulation, (c) disclosing such confidential information to its attorneys, accountants and other advisors under duties of confidentiality or (d) disclosing such confidential information to the extent required to exercise or enforce a Member's rights under this Agreement. Each Member may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of (i) the arrangements contemplated herein and (ii) any of their transactions, and all materials of any kind (including opinions or other tax analyses) that are provided to the Member relating to such tax treatment and tax structure.

Section 9.7 **Applicable Law**. All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the laws of the State of New Jersey, without regard to its conflict of laws principles.

Section 9.8 **Article and Section Titles**. The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

Section 9.9 **Binding Provisions**. This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and permitted assigns.

Section 9.10 **Venue; Exclusive Jurisdiction; Waiver of Jury Trial**. Any suit involving any dispute or matter arising under this Agreement may only be brought in the New Jersey Superior Court located in the County of Hudson or the United States District Court for the District of New Jersey located in Newark, New Jersey, or for the Southern District of New York located in New York, New York, whichever court has jurisdiction over the subject matter of the dispute or matter. Each Member irrevocably consents to the jurisdiction of such courts and waives any defense to such jurisdiction, including a defense based upon the actual or alleged inconvenience of such forum. Each Member hereby waives (i) personal service of process and agrees that a summons and compliant commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered or certified mail or by reputable overnight courier providing a receipt against delivery to such Member at the address herein provided for notices to such Member, or as otherwise provided by the laws of the State of New Jersey or the United States, as applicable, and (ii) THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROJECT, IT BEING AGREED THAT ANY SUCH MATTER SHALL BE TRIED BY A COURT WITHOUT A JURY.

Section 9.11 **Terms**. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

Section 9.12 **Separability of Provisions**. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

Section 9.13 **Representation by Counsel; No Conflict**

In the negotiation of this Agreement, the Members have been independently represented by counsel as specified in Section 5.12. The Albanese Member acknowledges that contemporaneously with negotiating this Agreement on behalf of the BRG Member, the law firm of Chiesa Shahinian &

Giantomasi PC has been representing the Company, and may in the future represent the Company, in connection with the Lawsuit and the Project. Each Member waives any actual or potential conflict of interest that may arise from such current or future representation of the Company by Chiesa Shahinian & Giantomasi PC, while serving as counsel to the BRG Member in connection with this Agreement and/or serving as counsel to one or more Persons in the BRG Group in matters unrelated to the Project and this Agreement. In the event of a dispute between the Members or the exercise of rights by a Member or a Selling Member under Section 5.10 or 5.11 (a "**Member Dispute**"), the Albanese Member agrees that Chiesa Shahinian & Giantomasi PC may represent the BRG Member in connection therewith and withdraw as counsel to the Company, and the Albanese Member shall not allege any conflict of interest or other basis to attempt to disqualify or otherwise prevent Chiesa Shahinian & Giantomasi PC from serving, or induce Chiesa Shahinian & Giantomasi PC not to serve, as counsel to the BRG Member in connection with the Member Dispute.

Section 9.14 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, as of the date set forth hereinabove.

MEMBERS:

ALBANESE HARRISON LOFTS LLC

By: _____
Name: Christopher V. Albanese
Title: Manager

BRG LAMPWORKS VENTURES, LLC

By: _____
Name: Thomas A. Berkenkamp
Title: Manager

IN WITNESS WHEREOF, the parties have executed, or caused this Agreement to be executed, as of the date set forth hereinabove.

MEMBERS:

ALBANESE HARRISON LOFTS LLC

By: _____
Name: Christopher V. Albanese
Title: Manager

BRG LAMPWORKS VENTURES, LLC

By: _____
Name: Thomas A. Berkenkamp
Title: Manager

EXHIBIT A

GLOSSARY OF DEFINED TERMS

"**ACC Cap**" means (i) with respect to the BRG Member, the BRG ACC Cap and (ii) with respect to the Albanese Member, the Albanese ACC Cap.

"**Act**" means the New Jersey Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq., as amended from time to time.

"**Acquisition Contract**" shall mean that certain Agreement of Sale, dated February 2, 2012, for the sale of the Property between V.I.P. Realty Associates, as seller, and Company, as purchaser, as amended by First Amendment to Agreement of Sale, dated May 9, 2012, Second Amendment to Agreement of Sale, dated July 31, 2012, Third Amendment to Agreement of Sale, dated August 31, 2012, Fourth Amendment to Agreement of Sale, dated September 28, 2012, Fifth Amendment to Agreement of Sale, dated November 1, 2012, Sixth Amendment to Agreement of Sale, dated November 9, 2012, Seventh Amendment to Agreement of Sale, dated December 18, 2012, Eighth Amendment to Agreement of Sale, dated April 1, 2013, Ninth Amendment to Agreement of Sale, dated April 24, 2013, Tenth Amendment to Agreement of Sale, dated May 3, 2013, Eleventh Amendment to Agreement of Sale, dated May 23, 2013 and Twelfth Amendment to Agreement of Sale, dated August 15, 2013, and as further modified pursuant to that certain Settlement Agreement and Release, dated as of June 5, 2015.

"**ADC Executives**" shall have the meaning specified in Section 5.7(b).

"**Additional Capital Call Notice**" shall have the meaning specified in Section 3.2(b).

"**Additional Capital Contribution**" means a Capital Contribution requested pursuant to Section 3.2 and includes a Required Additional Capital Contribution and a Discretionary Additional Capital Contribution.

"**Additional Capital Due Date**" shall have the meaning specified in Section 3.2(b).

"**Additional Contribution Ratio**" means sixty-six and two-thirds (66-2/3%) percent as to the Albanese Member and thirty-three and one-third (33-1/3%) percent as to the BRG Member. Any successor to the Economic Interest of a Member who was not admitted as a Member of the Company shall succeed to the Additional Contribution Ratio of the Member, to the extent the successor has succeeded to that Member's Economic Interest.

"**Additional Project Costs**" means any additional Project costs in excess of the total Project cost set forth in the Approved Project Budget, incurred to complete and lease the Project to facilitate the refinancing of the Construction Loan with the Permanent Loan or that the lender of the Construction Loan requires be funded by the Company as a condition to making further advances of the Construction Loan.

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in the Member's Capital Account as of the end of the relevant tax year, after giving effect to the following adjustments:

(i) the deficit shall be decreased by any amounts which the Member is obligated to restore or is deemed obligated to restore to the Company pursuant to Regulation Sections 1.704-1(b)(2)(ii)(b)(3) and 1.704-1(b)(2)(ii)(c) and including any amounts described in the penultimate sentences of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) the deficit shall be increased by the items described in subparagraphs (4), (5) and (6) of Regulation Section 1.704-1(b)(2)(ii)(d).

"**Affiliate**" means, with respect to any Member, any Person: (i) which owns 50% or more of the voting interests in the Member; or (ii) in which the Member owns 50% or more of the voting interests; or (iii) in which 50% or more of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above; or (iv) who otherwise controls, is controlled by, or under common control with, the Member; *provided, however,* the Company or any Subsidiary Entity shall not be considered an Affiliate of any Member; and, *provided, further,* Albanese Organization, Inc. and its wholly owned subsidiaries, including Albanese Development Corporation and American Realty & Management, Inc., shall be considered Affiliates of the Albanese Member. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" means this Amended and Restated Operating Agreement, as amended from time to time.

"**Albanese ACC Cap**" shall have the meaning specified in Section 3.2(a).

"**Albanese Group**" means any one or more of the following Persons: (i) Russell C. Albanese or Christopher V. Albanese or (ii) any Person (1) in which any one or more of the individuals described in clause (i) owns, directly or indirectly, more than 50% of the voting interests *and* (2) which is otherwise controlled, directly or indirectly, by any one or more of the individuals described in clause (i). The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**Albanese Member**" means any Member of the Company that is a member of the Albanese Group.

"**Annual Budget**" shall have the meaning specified in Section 5.4(c).

"**AO**" shall have the meaning specified in Section 6.3(b).

"**Applicable Purchase Price**" means with respect to the Membership Interest being sold, an amount equal to the amount the holder of said Membership Interest would receive pursuant to Section 4.2(c) of this Agreement if the Company were liquidated on the Determination Date and the Company sold all of its assets (*excluding* cash, accounts receivable and prepaid expenses, but *including* the Property and all other assets, whether tangible or intangible, real or personal) for an amount equal to the Stated Asset Value, and distributed in liquidation of the Company pursuant to Section 4.2(c) hereof, the excess of: (i) the sum of (A) the amount of the Stated Asset Value, *plus* (B) the amount of all cash balances, accounts receivable and prepaid expenses of the Company held on the Determination Date, *over* (ii) the amount of all debts (*including* accrued expenses) of the Company as of the Determination Date, including without limitation the outstanding amount of any fees (including the fees payable to the Members or their Affiliates pursuant to this Agreement), loans (including Preferred Capital Loans and Member Loans) or any other obligation due by the Company to any Member or its Affiliate. If the Property is owned by a Subsidiary Entity that is wholly owned by the Company, the assets and liabilities of the Company and Subsidiary Entity shall be combined for purposes of determining the Applicable Purchase Price.

"**Approved Project Budget**" means the budget of all costs, including all Predevelopment Costs, incurred or anticipated to be incurred in connection with the development of the Project that has been prepared by the Members and approved by the lender of the Construction Loan on the date of the closing of the Construction Loan.

"**ARM**" shall have the meaning specified in Section 5.8(a).

"**Asset Management Fee**" shall have the meaning specified in Section 5.8(b).

"**Authorized Representative**" means with respect to a Member, the individual designated by the Member pursuant to Section 5.3(e) who shall have, acting alone, express authority to make decisions on behalf of the Member and to act for and bind the Member as its authorized agent with respect to all matters requiring the Member's approval or authorization pursuant to this Agreement or the Act.

"**Berkenkamp**" shall have the meaning specified in Section 5.7(f).

"**BRG ACC Cap**" shall have the meaning specified in Section 3.2(a).

"**BRG Executives**" shall have the meaning specified in Section 5.7(b).

"**BRG Group**" means any one or more of the following Persons: (i) Thomas A. Berkenkamp, Mark Schaevitz and, to the extent she has been appointed an Authorized Representative, Marla Smith or (ii) any Person in which the individual described in clause (i) owns, directly or indirectly, more than 50% of the beneficial interests *and* which is otherwise controlled, directly or indirectly, by the Persons described in clause (i). The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management

and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**BRG Member**" means any Member of the Company that is a member of the BRG Group.

"**Budget**" means an Annual Budget or any other budget for the Project approved by the Members in accordance with this Agreement.

"**Call Conditions**" shall have the meaning specified in Section 3.2(a).

"**Call Notice**" shall mean an Initial Capital Call Notice or an Additional Capital Call Notice.

"**Capital Account**" means the account to be maintained by the Company for each Member in accordance with the following provisions:

(i) a Member's Capital Account shall be credited with the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member (or which are secured by Company property distributed to the Member), the Member's distributive share of Profit, Gain on Disposition and any item in the nature of income or gain specially allocated to the Member pursuant to the provisions of Article 4 (other than Section 4.8(c)); and

(ii) a Member's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), the Member's distributive share of Loss, Loss on Disposition and any item in the nature of expenses or losses specially allocated to the Member pursuant to the provisions of Article 4 (other than Section 4.8(c)).

If any Economic Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Economic Interest. If the book value of Company property is adjusted pursuant to Section 4.8(c), the Capital Account of each Member shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment. It is intended that the Capital Accounts of all Members shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b)(2)(iv), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with the Regulations.

"**Capital Contribution**" means the total amount of cash and the fair market value of any other assets contributed (or deemed contributed under Regulation Section 1.704-1(b)(2)(iv)(d)) to the Company by a Member, net of liabilities assumed or to which the assets are subject, consisting of the Initial Capital Contribution, Enhanced Value Contribution and Additional Capital Contribution contributed (or deemed contributed) to the Company by a Member.

"**Capital Expenditures**" means all cash expenditures of the Company for the acquisition or improvement of any property, whether tangible or intangible, real or personal, that are properly chargeable to capital account with respect to such property pursuant to the provisions of the Code or the Regulations, including all cash expenditures for the acquisition of any Subsidiary Interest and for any capital contributions and/or loans made to any Subsidiary Entity.

"**Capital Receipts**" means (i) the sum of (A) the proceeds received by the Company from the sale, exchange or any other disposition of all or any portion of the assets of the Company, including any Subsidiary Interest, *plus* (B) any proceeds distributed to the Company from any Subsidiary Entity on account of the sale, exchange or any other disposition of all or any portion of the assets of the Subsidiary Entity, *reduced* by (ii) the sum of (A) any Capital Expenditures required by the Managing Member to be made from the proceeds described in clause (i), *plus* (B) amounts used by the Managing Member from the proceeds described in clause (i) to repay any indebtedness of the Company (other than any Preferred Capital Loans and Member Loans), *plus* (C) any and all expenses incurred by the Company in connection with the sale, exchange or other disposition described in clause (i), *plus* (D) amounts set aside from the proceeds described in clause (i) as reserves for anticipated expenditures (including Capital Expenditures) and working capital requirements of the Company established from time to time by the Managing Member to the extent consistent with the approved Budget.

"**Closing Period**" shall have the meaning specified in Section 5.10(c)(i).

"**Code**" means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

"**Co-Developer**" shall have the meaning specified in Section 5.7(a).

"**Company**" means BRG Harrison Lofts Urban Renewal, LLC, a New Jersey limited liability company.

"**Company Accounting Year**" means and refers to the accounting year of the Company ending December 31 of each calendar year or such shorter fiscal period during such year for which a relevant determination is being made under this Agreement.

"**Company Minimum Gain**" has the meaning ascribed to the term "Partnership Minimum Gain" in Regulation Section 1.704-2(d)(1) (and includes the Company's share of the "Partnership Minimum Gain" of any Pass-Through Entity). Company Minimum Gain shall be computed in a manner consistent with the Regulations under Code Section 704(b).

"**Construction Loan**" shall have the meaning specified in Section 5.6(a).

"**Contribution Loan**" shall have the meaning specified in Section 3.3(c).

"**Cross-Indemnity Agreement**" shall have the meaning specified in Section 5.6(c).

"**Cure**" means the payment by the Defaulting Member of the Defaulted Amount within (i) fifteen (15) days after the Initial Capital Due Date in the case of the failure to contribute an Initial Capital Contribution or (ii) fifteen (15) days after the Default Notice is given to the Defaulting Member by the Requesting Member in the case of the failure to contribute an Additional Capital Contribution.

"**Deadlock Date**" shall have the meaning specified in Section 5.10(a).

"**Decision Notice**" shall have the meaning specified in Section 5.10(a).

"**Default**" shall have the meaning specified in Section 3.3(a).

"**Defaulted Amount**" shall have the meaning specified in Section 3.3(a).

"**Defaulting Member**" shall have the meaning specified in Section 3.3(a).

"**Default Notice**" shall have the meaning specified in Section 3.3(a).

"**Deposit Amount**" shall have the meaning specified in Section 5.10(b)(iii).

"**Determination Date**" means the last day of the second calendar month preceding the calendar month in which the closing described in Section 5.10(c)(i) occurs (e.g., if the closing occurs on September 15 of any calendar year, the Determination Date is July 31 of such calendar year).

"**Developer**" shall have the meaning specified in Section 5.7(a).

"**Development Decision**" shall have the meaning specified in Section 5.3(a).

"**Development Fee**" shall have the meaning specified in Section 5.7(c).

"**Direct Personnel Expense**" means, with respect to any given individual for any given period, the sum of (i) the salary, bonus, employer pension contribution and the reasonable automobile allowance payable by the Developer, ARM or their respective Affiliates for such individual for the calendar year in which such given period shall occur, *plus* (ii) the annual costs for payroll taxes, unemployment insurance, state disability insurance, long term disability insurance, medical insurance, dental insurance, life insurance and workman's compensation insurance payable by the Developer, ARM or their respective Affiliates for such individual for the calendar year in which such given period shall occur. The Direct Personnel Expense, broken down by each constituent element, for each individual comprising the Project Staff is set forth on Exhibit E attached to this Agreement.

"**Discretionary Additional Capital Contribution**" means any Additional Capital Contributions requested pursuant to Section 3.2 (i) in excess of the Required Additional Capital Contributions or (ii) following the Stabilization Date.

"**Discretionary Additional Capital Return**" means an amount equal to fifteen (15%) percent per annum, compounded annually (to the extent not distributed pursuant to Section 4.1(c)), on the Undistributed Discretionary Additional Capital of each Member, for the period commencing on the later of: (x) the Additional Capital Due Date for each Discretionary Additional Capital Contribution (or remaining portion thereof) that has not been repaid pursuant to Section 4.1(d) (such repayments to be applied on a last in first out basis) or (y) the date that such Discretionary Additional Capital Contribution (or remaining portion thereof) is made or is deemed made pursuant to the terms of this Agreement, and ending on the day prior to the date the Discretionary Additional Capital Return is being determined.

"**Due Date**" shall mean an Initial Capital Due Date or an Additional Capital Due Date.

"**Economic Interest**" means a Person's share of the Profits and Losses from operations and Gains on Dispositions and Losses on Dispositions of the assets of the Company, and the right to receive distributions from the Company, including such Person's Percentage, Capital Account, Undistributed Initial Capital, Undistributed Enhanced Value, Undistributed Additional Capital Return and Undistributed Additional Capital, if any.

"**Effective Date**" shall have the meaning specified in the preamble to this Agreement.

"**Effective Date Contribution**" shall have the meaning specified in Section 3.1(a).

"**Effective Interest Rate**" shall have the meaning specified in Section 3.9(c).

"**Election Date**" shall have the meaning specified in Section 5.10(c)(iii)(2).

"**Election Notice**" shall have the meaning specified in Section 5.10(b)(iii).

"**Emergency Expenses**" means reasonable costs and expenses incurred in order to (a) prevent or mitigate an imminent threat to the health, safety or welfare of any Person at or in the immediate vicinity of the Property, or (b) prevent or mitigate imminent physical damage or physical loss to the Property.

"**Enhanced Value Contribution**" means an amount equal to $2,330,000.

"**Escrow Agent**" shall have the meaning specified in Section 5.10(b)(ii).

"**Exculpated Person**" shall have the meaning specified in Section 5.9(a).

"**Gain on Disposition**" or "**Loss on Disposition**" means the gain or loss, as the case may be, of the Company for federal income tax purposes: (i) arising from a sale, exchange or other taxable disposition (including casualty or condemnation) of all or any portion of the assets of the Company, including the Property and any Subsidiary Interest, and (ii) the Company's allocated share of the gain or loss arising from a sale, exchange or other taxable disposition (including casualty or condemnation) of all or any portion of the assets of any Pass-Through Entity. Gain on Disposition or

Loss on Disposition with respect to any disposition of all or a portion of contributed property shall be computed by reference to the agreed upon fair market value of the property disposed of (as adjusted for book purposes from time to time), notwithstanding that the adjusted tax basis of such property may differ from such agreed upon fair market value.

"**Gross Receipts**" means, with respect to any given period, the aggregate gross income received by the Company for such given period from any source whatsoever, whether taxable or tax-exempt, including all rental income collected from the Property; *excluding, however,* Capital Receipts, Net Mortgage Proceeds and casualty insurance proceeds used or held for the restoration of the improvements on the Property.

"**Guarantor**" shall have the meaning specified in Section 5.6(c).

"**Guaranty**" shall have the meaning specified in Section 5.6(c).

"**Guaranty Loan**" shall have the meaning specified in Section 5.6(d).

"**Hourly Cost Rate**" means with respect to any given individual for any given period, the product of (i) 1.3, *multiplied* by (ii) the Direct Personnel Expense for such individual applicable for such given period, *divided* by (iii) 1,824.

"**Indemnified Person**" shall have the meaning specified in Section 5.9(b).

"**Indemnity and Settlement Agreement**" shall mean the Indemnity and Settlement Agreement, dated November 5, 2014 by and between General Electric Company and the Company.

"**Initial Capital Call Notice**" shall have the meaning specified in Section 3.1(c).

"**Initial Capital Contribution**" means, collectively, the Pre-Effective Date Contribution by the BRG Member, the Effective Date Contribution by the Albanese Member and each Capital Contribution requested pursuant to Section 3.1 and made by either Member from and after the Effective Date.

"**Initial Capital Due Date**" shall have the meaning specified in Section 3.1(c).

"**Initial Contribution Ratio**" means (i) prior to the acquisition of the Property, sixty-six and two-thirds (66-2/3%) percent as to the Albanese Member and thirty-three and one-third (33-1/3%) percent as to the BRG Member and (ii) on and after the acquisition of the Property, seventy-nine and ninety-eight one hundredths (79.98%) percent as to the Albanese Member and twenty and two one hundredths (20.02%) percent as to the BRG Member. Any successor to the Economic Interest of a Member who was not admitted as a Member of the Company shall succeed to the Initial Contribution Ratio of the Member, to the extent the successor has succeeded to that Member's Economic Interest.

"**Initiating Member**" shall have the meaning specified in Section 5.10(a).

"**Interest Rate**" means a fixed interest rate equal to the base rate on corporate loans posted by at least 70% of the 10 largest U.S. banks in effect on the Determination Date, as published in *The Wall Street Journal* as the prime rate. If the Members reasonably determine that the prime rate is no longer published by *The Wall Street Journal* or otherwise available, then the Members, exercising their reasonable judgment, shall specify a comparable substitute interest rate to be used in place of such prime rate.

"**Involuntary Withdrawal**" means, with respect to any Member, the occurrence of any of the following events:

(i) the Member makes an assignment for the benefit of creditors;

(ii) the Member files a voluntary petition of bankruptcy;

(iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;

(iv) the Member files a petition seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) the Member seeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the Member or of all or any substantial part of the Member's properties;

(vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in clauses (i) through (v) above;

(vii) any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, continues for one hundred twenty (120) days after the commencement thereof, or the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty (120) days or, if the appointment is stayed, for one hundred twenty (120) days after the expiration of the stay during which period the appointment is not vacated;

(viii) if the Member is an individual, the Member's death, incapacity or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;

(ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;

(x) if the Member is a partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company;

(xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter; or

(xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

"**Lawsuit**" means the lawsuit between the Company, V.I.P. Realty Associates and certain other defendants party thereto, currently pending in the Superior Court of the State of New Jersey, Chancery Division, Hudson County, under the caption *BRG Harrison Lofts Urban Renewal LLC v. V.I.P. Realty Associates, et als.*, bearing Docket No. C-179-14.

"**Leasing Fee**" shall have the meaning specified in Section 5.8(c).

"**Lending Members**" shall have the meaning specified in Section 3.8(b).

"**Liquidator**" means the individual or entity designated by those Members owning a majority of the Percentages of the Company, to wind up the affairs of the Company pursuant to the provisions of Section 7.2.

"**List**" means the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury and/or any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing statute, executive order or regulation.

"**Major Decision**" shall have the meaning specified in Section 5.3(b).

"**Managing Member**" means (i) from the date of this Agreement through and including the close of business on the Stabilization Date, the Albanese Member and the BRG Member, collectively and (ii) commencing on the first day following the Stabilization Date, the Albanese Member, in each case subject to the removal of a Managing Member in accordance with Section 5.2(f) of this Agreement.

"**Managing Member Removal Event**" means, with respect to any Managing Member, the occurrence of any of the following:

(i) the Managing Member, any Affiliate of the Managing Member and/or any Person controlling the Managing Member, or any employee of any of the foregoing, has engaged in fraud or willful misconduct with respect to the Company, any Subsidiary Entity, the Project or the Property; *provided* that any fraud or willful misconduct by an employee (other than an employee that is a principal of the Managing Member, any Affiliate of the Managing Member and/or any Person controlling the Managing Member) shall not constitute a Managing Member Removal Event if such employee's employment or association is

terminated and the Managing Member provides restitution of any damages incurred by the Company in connection with such fraud or willful misconduct within thirty (30) days of notice to the Managing Member from any other Member;

(ii) the Managing Member, any Affiliate of the Managing Member and/or any Person controlling the Managing Member, or any employee of any of the foregoing, has engaged in misappropriation with respect to the Company, any Subsidiary Entity, the Project or the Property; *provided* that any misappropriation by an employee (other than an employee that is a principal of the Managing Member, any Affiliate of the Managing Member and/or any Person controlling the Managing Member) shall not constitute a Managing Member Removal Event if such employee's employment or association is terminated and the Managing Member provides restitution of such misappropriated amount within thirty (30) days of notice to the Managing Member from any other Member;

(iii) the termination of the Managing Member's rights to participate as a member in the management and conduct of the Company's activities to the extent provided in Section 3.1(b) or Section 3.3(d);

(iv) the failure of the Managing Member or its creditworthy Affiliate to execute and deliver a Guaranty and/or Cross-Indemnity Agreement in accordance with the provisions of Section 5.6(c);

(v) the occurrence of a Voluntary Withdrawal with respect to the Managing Member;

(vi) the occurrence of an Involuntary Withdrawal with respect to the Managing Member; and

(vii) in the event that a Member gives notice to the Managing Member of one or more defaults or breaches under this Agreement by the Managing Member or its Affiliate, which defaults and/or breaches have, individually or in the aggregate, a Material Adverse Effect, and such defaults and/or breaches are susceptible of being cured and remain uncured for a period of thirty (30) days after receipt of such notice by the Managing Member or, if such defaults and/or breaches are not susceptible of cure within such thirty (30) day period, such longer period of time as is reasonably necessary with diligence to cure such defaults and/or breaches so long as within thirty (30) days the Managing Member shall have commenced cure of same and shall at all times thereafter continuously and diligently prosecute such cure; *provided, however,* that any such default or breach that is caused by a contractor, subcontractor, architect, engineer or other third-party service provider will not be considered a default or breach of the Managing Member or its Affiliate, so long as the Managing Member is diligently working to mitigate the impact of such default or breach caused by such third-party service provider.

"**Material Adverse Effect**" means (a) prior to the Stabilization Date, a material adverse effect upon the completion of the Project and/or the cost of completion, and/or the ability of the

Company to refinance the Construction Loan with the Permanent Loan, and (b) from and after the Stabilization Date, a material adverse effect upon the value, use or financeability of all or any substantial portion of the Property or the operation thereof.

"**Member**" means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company, whether such Person is a Managing Member or a Non-Managing Member.

"**Member Dispute**" shall have the meaning specified in Section 9.13.

"**Member Loans**" shall have the meaning specified in Section 3.8(b).

"**Member Nonrecourse Debt Minimum Gain**" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulation Section 1.704-2(i)(2).

"**Member Nonrecourse Debt**" has the meaning ascribed to the term "Partner Nonrecourse Debt" set forth in Regulation Section 1.704-2(b)(4).

"**Member Nonrecourse Deductions**" has the meaning ascribed to the term "Partner Nonrecourse Deductions" set forth in Regulation Section 1.704-2(i). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company Accounting Year equals the excess, if any, of: (i) the net increase, if any, in the amount of the Company Minimum Gain attributable to such Member Nonrecourse Debt during such Company Accounting Year, over (ii) the aggregate amount of any distributions during such year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined according to the provisions of Regulation Section 1.704-2(i).

"**Membership Interest**" means all of the rights of a Member in the Company, including a Member's: (i) Economic Interest; (ii) right to inspect the Company's books and records; (iii) right to participate in the management of and vote on matters coming before the Company to the extent provided in this Agreement or required under the Act; and (iv) right to act as an agent of the Company to the extent provided in this Agreement.

"**Monthly Minimum**" means an amount equal to (i) $10,416.67, if the Substantial Completion Date has occurred as to all three buildings comprising the Project or (ii) the product of $54.42 multiplied by the number of units available for lease, if the Substantial Completion Date has not occurred as to all three buildings comprising the Project.

"**Net Available Cash**" means, as of the end of each calendar quarter during any Company Accounting Year, or on any other relevant date of determination (i) the sum of all cash receipts of the Company during such year from all sources (including Capital Contributions, cash on hand at the

beginning of the Company Accounting Year to the extent not held in reserves, distributions from any Subsidiary Entity, and any funds released during such Company Accounting Year from cash reserves previously established), *minus* (ii) the sum of (A) Capital Receipts, (B) Net Mortgage Proceeds, (C) Operating Costs and (D) all cash distributions theretofore made to the Members during such Company Accounting Year, other than cash distributions constituting Net Mortgage Proceeds or Capital Receipts.

"**Net Mortgage Proceeds**" means (i) the sum of (A) the proceeds of any loan, or from the refinancing of any loan, made to the Company, *plus* (B) any amount released from cash deposit or escrow accounts established under any loan made to the Company that is permitted to be distributed to the Members by the lender thereof, *plus* (C) the proceeds distributed to the Company by any Subsidiary Entity on account of any loan, or the refinancing any loan, made to the Subsidiary Entity or on account of any amount released from cash deposit or escrow accounts established under any loan to any Subsidiary Entity, *reduced* by (ii) the sum of (A) any Capital Expenditures required by the Managing Member to be made from the proceeds described in clause (i), *plus* (B) amounts used by the Managing Member from the proceeds described in clause (i) to repay other indebtedness of the Company (other than any Preferred Capital Loans and Member Loans), *plus* (C) any and all expenses incurred by the Company in connection with the loan, refinancing or release described in clause (i), *plus* (D) amounts set aside from the proceeds described in clause (i) as reserves for anticipated expenditures (including Capital Expenditures) and working capital requirements of the Company established from time to time by the Managing Member to the extent consistent with the approved Budget.

"**Non-Defaulting Members**" shall have the meaning specified in Section 3.3(a).

"**Non-Discretionary Expenses**" means (i) utility expenses, real estate taxes and assessments, insurance premiums, (ii) expenses reasonably necessary in order to cause the Property to comply in all material respects with applicable laws (including, without limitation, amounts needed to pay any fines and penalties imposed by any governmental authority) and (iii) costs reasonably necessary in order to satisfy obligations of the Company or any Subsidiary Entity that may result in the forfeiture or loss of the Property if not paid, *excluding, however,* any amounts necessary for the repayment of any loan secured by the Property or any mezzanine financing, including without limitation, the Construction Loan, the Permanent Loan or any Preferred Capital Loan.

"**Non-Managing Member**" means each Member that is not a Managing Member.

"**Non-Punitive Dilution Methodology**" means the methodology for recalculating the Members' respective Percentages utilizing the Relative Percentages Formula as described on Exhibit I under the example marked "Non-Punitive Dilution Methodology".

"**Nonrecourse Deductions**" has the meaning set forth in Regulation Section 1.704-2(c). The amount of Nonrecourse Deductions for a Company Accounting Year equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that fiscal year, over the aggregate amount of any distributions during that fiscal year of proceeds of a Nonrecourse Liability

that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Regulation Section 1.704-2(c).

"**Nonrecourse Liability**" has the meaning set forth in Regulation Section 1.704-2(b)(3).

"**Operating Costs**" means the sum of (i) all cash expenditures of the Company made during the Company Accounting Year for current costs and expenses (except to the extent constituting a reduction in computing Net Mortgage Proceeds or Capital Receipts for the Company Accounting Year), including payments of: (A) interest and principal or other monetary obligations due under any loan made to the Company (but, *excluding* payments of interest and principal due under any Preferred Capital Loans and Member Loan), (B) accounting, legal and auditing fees, (C) real estate taxes, (D) public or private utility charges, (E) sales and use taxes, payroll taxes, withholding taxes and other taxes or governmental charges and (F) all other operating costs and expenses actually paid with respect to the Company's business or reimbursed to Members; *plus* (ii) any Capital Expenditures required by the Managing Member to be made during the Company Accounting Year (except to the extent constituting a reduction in computing Net Mortgage Proceeds or Capital Receipts for the Company Accounting Year); *plus* (iii) amounts set aside as reserves for anticipated expenditures (including Capital Expenditures) and working capital requirements of the Company established from time to time during the Company Accounting Year by the Managing Member (except to the extent constituting a reduction in computing Net Mortgage Proceeds or Capital Receipts for the Company Accounting Year).

"**Option Notice**" shall have the meaning specified in Section 5.10(b)(i).

"**Other Member**" shall have the meaning specified in Section 5.11.

"**Participation Notice**" shall have the meaning specified in Section 3.3(b)(i).

"**Pass-Through Entity**" means any corporation, partnership, association, limited liability company or other entity in which the Company owns an interest, that is treated as a partnership or an "S corporation" for federal income tax purposes.

"**Percentage**" means, as to a Member, the percentage on Exhibit B in the column designated "Percentage" set forth opposite the Member's name, as the same may be amended from time to time pursuant to the provisions of this Agreement, and as to a successor of the Economic Interest of a Member who was not admitted as a Member of the Company, the percentage on Exhibit B in the column designated "Percentage" set forth opposite the name of the Member whose Economic Interest has been acquired by such successor, to the extent the successor has succeeded to that Member's Economic Interest, as the same may be amended from time to time pursuant to the provisions of this Agreement.

"**Permanent Loan**" shall have the meaning specified in Section 5.6(b).

"**Permitted Tolerances**" shall have the meaning specified in Section 5.3(b)(iii).

"**Person**" means and includes an individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

"**Predevelopment Costs**" means the costs associated with (i) the preliminary due diligence investigation pertaining to the Project incurred prior to the date hereof, (ii) legal fees and other costs incurred in connection with the remediation of the environmental contamination at the Property and the execution of the Indemnity and Settlement Agreement incurred prior to the date hereof, (iii) the contract deposit paid pursuant to the Acquisition Agreement and (iv) all other pre-development costs anticipated to be incurred prior to closing of the acquisition of the Property.

"**Pre-Effective Date Contribution**" shall have the meaning specified in Section 3.1(a).

"**Preferred Capital Loans**" shall have the meaning specified in Section 3.9(b).

"**Primary Field Office**" shall have the meaning specified in Section 5.7(f).

"**Primary Property**" shall have the meaning specified in Section 2.3(a).

"**Profit**" or "**Loss**" means, for each Company Accounting Year, an amount equal to the Company's taxable income or loss for such Company Accounting Year (determined without regard to any items of income, gain, loss or deduction taken into account in computing the Company's Gain on Disposition or Loss on Disposition for such Company Accounting Year), determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing such taxable income or loss), including the Company's allocated share of taxable income or loss from any Pass-Through Entity, with the following adjustments:

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing taxable income or loss, shall be added in computing Profit or Loss;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing taxable income or loss, shall be included in computing Profit or Loss;

(iii) in the event the agreed fair market value of any property of the Company is adjusted pursuant to Regulation Section 1.704-1(b)(2)(iv)(f) or other pertinent Sections of such Regulations, the amount of such adjustment shall be taken into account as Gain on Disposition or Loss on Disposition of such property for purposes of computing Profit or Loss; and in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account depreciation, amortization or other cost recovery computed with reference to the book value of such property (if different from its adjusted tax basis) pursuant to Regulation Section 1.704-1(b)(2)(iv)(g) for such Company Accounting Year; and

(iv) notwithstanding any other provisions, any items which are specially allocated pursuant to Sections 4.5(b), 4.7, 4.8 and 4.9 shall not be taken into account in computing Profit or Loss.

"**Project**" shall have the meaning specified in Section 2.3(a).

"**Project Staff**" shall have the meaning specified in Section 5.7(b).

"**Property**" shall have the meaning specified in Section 2.3.

"**Property Management Fee**" shall have the meaning specified in Section 5.8(a).

"**Punitive Dilution Methodology**" means the methodology for recalculating the Members' respective Percentages utilizing the Relative Percentages Formula and after giving effect to a Shifting of Capital, all as described on Exhibit I under the example marked "Punitive Dilution Methodology".

"**Recipient Member**" shall have the meaning specified in Section 5.10(a).

"**Redevelopment Agreement**" means the Redevelopment Agreement, dated October 9, 2013, by and between the Harrison Redevelopment Agency and the Company.

"**Regulation**" means the federal income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

"**Reimbursable Salary Costs**" means, with respect to any given individual for any given period, the product of (i) the Hourly Cost Rate for such individual in effect for such given period, *multiplied* by (ii) the number of hours such individual has provided the services described in Section 5.7 or Section 5.8 for the benefit of the Company or any Subsidiary Entity during such given period.

"**Relative Percentages Formula**" means the following formula which establishes the relationship between the Member's relative aggregate Capital Contributions and their relative Percentages:

2 x (BRG Member's Capital Contributions/Albanese Member's Capital Contributions) =

BRG Member's Percentage/Albanese Member's Percentage

"**Requesting Member**" means (i) in the case of a request for an Initial Capital Contribution pursuant to Section 3.1, the Managing Member and (ii) in the case of a request for an Additional Capital Contribution pursuant to Section 3.2, the Managing Member requesting an Additional Capital Contribution pursuant to clause (i) of Section 3.2(a) or the Member requesting an Additional Capital Contribution pursuant to clause (ii) of Section 3.2(a), as the case may be; *provided, however,* in no event may a Defaulting Member be a Requesting Member.

"**Required Additional Capital Contribution**" means any Additional Capital Contribution requested on or before the Stabilization Date pursuant to Section 3.2 that when taken together with any Additional Capital Contribution previously requested pursuant to Section 3.2 does not exceed (i) the aggregate amount of $6,000,000 with respect to all Members or (ii) the applicable ACC Cap with respect to each Member.

"**Required Additional Capital Return**" means an amount equal to twelve (12%) percent per annum, compounded annually (to the extent not distributed pursuant to Section 4.1(f)), on the Undistributed Required Additional Capital of each Member, for the period commencing on the later of: (x) the Additional Capital Due Date for each Required Additional Capital Contribution (or remaining portion thereof) that has not been repaid pursuant to Section 4.1(g) (such repayments to be applied on a last in first out basis) or (y) the date that such Required Additional Capital Contribution (or remaining portion thereof) is made or is deemed made pursuant to the terms of this Agreement, and ending on the day prior to the date the Required Additional Capital Return is being determined.

"**Sale Contract**" shall have the meaning specified in Section 5.10(d)(ii).

"**Sale Period**" shall have the meaning specified in Section 5.10(d)(ii).

"**Securities Acts**" shall have the meaning specified in Section 9.6(a)(i).

"**Select Major Decisions**" means the Major Decisions described in clauses (vii), (viii), (xiv), (xv) and (xvi) of Section 5.3(b); *provided, however*, the Major Decision described in clause (xv) shall constitute a Select Major Decision only if the additional party to be admitted as a Member is an Affiliate of a Member.

"**Selling Member**" shall have the meaning specified in Section 5.11.

"**Service Fees and Costs**" shall have the meaning specified in Section 5.8(d).

"**Settlement Agreement**" shall have the meaning specified in Section 2.8(o).

"**Shifting of Capital**" means the reduction of a Member's Capital Contributions and the increase by the same amount of the Capital Contributions of one or more other Members, all as described in Section 3.3(b)(ii).

"**Stabilization Date**" shall mean the date of the closing of the Permanent Loan.

"**Stated Asset Value**" means the value of all of the assets of the Company (*excluding* cash, accounts receivable and prepaid expenses, but *including* the Property and all other assets, whether tangible or intangible, real or personal), specified by the Initiating Member in the Option Notice. If the Property is owned by a Subsidiary Entity that is wholly owned by the Company, the assets and liabilities of the Company and Subsidiary Entity shall be combined for purposes of determining the Stated Asset Value.

"**Subsidiary Entity**" means any corporation, partnership, association, limited liability company or other entity in which the Company owns an interest, including any Pass-Through Entity.

"**Subsidiary Interest**" means any interest owned by the Company in a Subsidiary Entity, including any interest owned by the Company in a Pass-Through Entity.

"**Substantial Completion Date**" shall mean the date that a temporary certificate of occupancy is issued for the Project by the applicable municipal authority for all portions of a building within the Project.

"**Tax Credits**" means any credit (whether or not refundable) against income taxes authorized pursuant to the provisions of any federal, state or local law, allocated to the Company by any Pass-Through Entity or which the Company is otherwise entitled to allocate to the Members.

"**Tax Matters Member**" shall have the meaning specified in Section 8.5.

"**Tax Termination**" shall have the meaning specified in Section 6.5(b).

"**Transfer**" when used as a noun: means any sale, hypothecation, pledge, assignment, attachment, or other transfer, whether voluntary or by operation of law; and, when used as a verb: means to sell, hypothecate, pledge, assign, or otherwise transfer, whether voluntarily or by operation of law.

"**UCC**" shall have the meaning specified in Section 3.3(c).

"**Undistributed Amounts**" shall have the meaning specified in Section 3.3(b).

"**Undistributed Discretionary Additional Capital**" means, with respect to each Member, an amount equal to the Discretionary Additional Capital Contributions, if any, made or deemed made from time to time to the Company by the Member or its predecessor in interest, less all distributions previously made to the Member or its predecessor in interest on account thereof pursuant to Section 4.1(d). If at any time during the term of the Company, the Undistributed Discretionary Additional Capital of any Member shall have been reduced to zero, Undistributed Discretionary Additional Capital thereafter shall be calculated with respect to the Member only by considering the Member's subsequent Discretionary Additional Capital Contributions made or deemed made to the Company, and subsequent distributions made pursuant to Section 4.1(d).

"**Undistributed Discretionary Additional Capital Return**" means, with respect to each Member, an amount equal to the Discretionary Additional Capital Return of the Member accrued for all periods prior to the date the Undistributed Discretionary Additional Capital Return is being determined, less all distributions made to the Member or its predecessor in interest pursuant to Section 4.1(c).

"**Undistributed Enhanced Value**" means, with respect to each Member, the Enhanced Value Contribution made or deemed made to the Company by the Member or its predecessor in

interest, less all distributions previously made to the Member or its predecessor in interest on account thereof pursuant to Section 4.1(e).

"**Undistributed Initial Capital**" means, with respect to each Member, the Initial Capital Contributions made or deemed made from time to time to the Company pursuant to Section 3.1, Section 3.3(b)(ii) or Section 3.3(c), as the case may be, by the Member or its predecessor in interest, less all distributions previously made to the Member or its predecessor in interest on account thereof pursuant to Section 4.1(h).

"**Undistributed Required Additional Capital**" means, with respect to each Member, an amount equal to the Required Additional Capital Contributions, if any, made or deemed made from time to time to the Company pursuant to Section 3.2, Section 3.3(b)(ii) or Section 3.3(c), as the case may be, by the Member or its predecessor in interest, less all distributions previously made to the Member or its predecessor in interest on account thereof pursuant to Section 4.1(g).

"**Undistributed Required Additional Capital Return**" means, with respect to each Member, an amount equal to the Required Additional Capital Return of the Member accrued for all periods prior to the date the Undistributed Required Additional Capital Return is being determined, less all distributions made to the Member or its predecessor in interest pursuant to Section 4.1(f).

"**Voluntary Withdrawal**" means a Member's disassociation with the Company by means other than a Transfer or an Involuntary Withdrawal.

"**Waived Amount**" shall have the meaning specified in Section 5.7(c).

"**Withdrawn Member**" shall have the meaning specified in Section 6.3.

"**Withdrawn Person**" shall have the meaning specified in Section 6.3.

EXHIBIT B

LIST OF MEMBERS, CONTRIBUTIONS AND PERCENTAGES

Member Name and Address	Initial Capital Contribution	Enhanced Value Contribution	Total	Percentage
ALBANESE HARRISON LOFTS LLC c/o Albanese Organization, Inc. 1050 Franklin Avenue Garden City, New York 11530	$9,333,333.00	$0.00	$9,333,333.00	50.00%
BRG LAMPWORKS VENTURES, LLC c/o Berkenkamp Realty Group 307 Frank E. Rodgers Blvd. So. Harrison, New Jersey 07029	$2,336,667.00	$2,330,000.00	$4,666,667.00	50.00%
Total	$11,670,000.00	$2,330,000.00	$14,000,000.00	100.00%

EXHIBIT C

ORGANIZATIONAL CHART OF ALBANESE MEMBER

REDACTED AS CONFIDENTIAL

EXHIBIT D

ORGANIZATIONAL CHART OF BRG MEMBER

EXHIBIT D
ORGANIZATION CHART OF BRG MEMBER

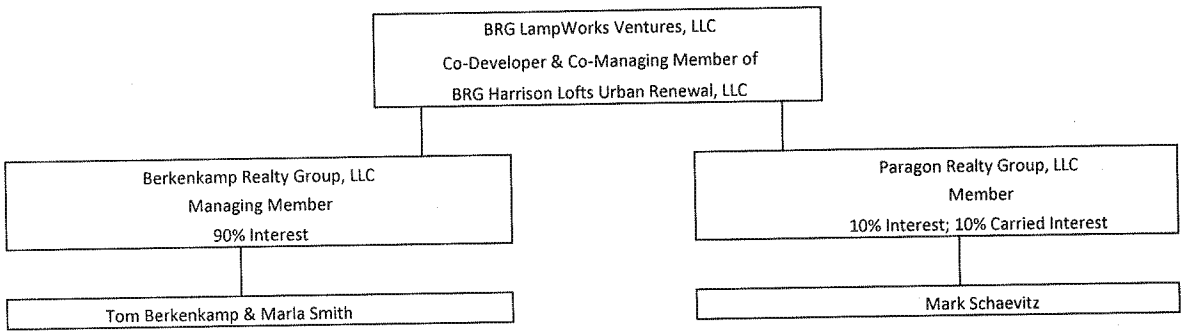

EXHIBIT E

DIRECT PERSONNEL EXPENSE OF PROJECT STAFF

EXHIBIT E
DIRECT PERSONNEL EXPENSE OF PROJECT STAFF

LampWorks: Albanese (ADC) Development Management Services Contract
ADC Pre-Con and Construction Period Staffing Budget*

		Bonus		Benefits		Taxes						
	Salary	%	$	%	$	%	$	Direct Personnel Expense	ADC Overhead %	Total	% on Project	Total Development Staffing
Pre-Construction (8 months)												
Project Mgr	$103,333	10.00%	$10,333	14.73%	$16,743	12.08%	$13,729	$144,138	1.30x	$187,379	100%	$187,379
Assistant PM 1	$73,333	10.00%	$7,333	9.41%	$7,590	14.12%	$11,388	$99,645	1.30x	$129,538	0%	$0
Project Admin	$39,333	10.00%	$3,933	14.69%	$6,356	10.43%	$4,513	$54,136	1.30x	$70,377	50%	$35,189
Project Accountant	$73,333	10.00%	$7,333	19.41%	$15,654	9.69%	$7,814	$104,135	1.30x	$135,375	25%	$33,844
Bookkeeper	$48,333	10.00%	$4,833	12.50%	$6,646	10.25%	$5,448	$65,260	1.30x	$84,838	5%	$4,242
Total Pre-Con			$33,767		$52,989		$42,892	$467,314		$607,508		$260,654
Year 1 (12 months)												
Project Mgr	$165,000	10.00%	$16,500	14.73%	$26,734	12.08%	$21,922	$230,156	1.30x	$299,203	100%	$299,203
Assistant PM 1	$120,000	10.00%	$12,000	9.41%	$12,421	14.12%	$18,635	$163,056	1.30x	$211,973	100%	$211,973
Project Admin	$62,000	10.00%	$6,200	14.69%	$10,019	10.43%	$7,114	$85,334	1.30x	$110,934	100%	$110,934
Project Accountant	$120,000	10.00%	$12,000	19.41%	$25,615	9.69%	$12,787	$170,402	1.30x	$221,523	25%	$55,381
Bookkeeper	$76,000	10.00%	$7,600	12.50%	$10,450	10.25%	$8,566	$102,616	1.30x	$133,401	5%	$6,670
Total Year 1			$54,300		$85,239		$69,024	$751,563		$977,033		$684,160
Year 2 (12 months)												
Project Mgr	$186,000	10.00%	$18,600	14.73%	$30,137	12.08%	$24,712	$259,448	1.30x	$337,282	100%	$337,282
Assistant PM 1	$130,000	10.00%	$13,000	9.41%	$13,456	14.12%	$20,188	$176,644	1.30x	$229,637	100%	$229,637
Project Admin	$65,000	10.00%	$6,500	14.69%	$10,504	10.43%	$7,459	$89,463	1.30x	$116,301	100%	$116,301
Project Accountant	$130,000	10.00%	$13,000	19.41%	$27,750	9.69%	$13,853	$184,602	1.30x	$239,983	25%	$59,996
Bookkeeper	$80,000	10.00%	$8,000	12.50%	$11,000	10.25%	$9,017	$108,017	1.30x	$140,422	5%	$7,021
Total Year 2			$59,100		$92,846		$75,228	$818,174		$1,063,625		$750,237
Grand Total Years 1-3			**$147,167**		**$231,074**		**$187,144**	**$2,037,051**		**$2,648,166**		**$1,695,051**

Benefits include Life Insurance, Medical Insurance, 401K; PR Taxes include FICA, Medicare, FUI, SUI, MCTT, DBL, WC
** Subject to annual review and approval by Owner*

EXHIBIT F

CROSS-INDEMNITY AGREEMENT

CROSS-INDEMNITY AGREEMENT

THIS CROSS-INDEMNITY AGREEMENT (the "**Agreement**") is made as of the ___ day of _____, 20__ by and between **ALBANESE HARRISON LOFTS LLC**, a New York limited liability company ("**Albanese Member**"), **RUSSELL C. ALBANESE** and **CHRISTOPHER V. ALBANESE** (collectively, "**Albanese Guarantor**" and together with the Albanese Member, the "**Albanese Parties**"), **BRG LAMPWORKS VENTURES, LLC**, a New Jersey limited liability company ("**BRG Member**") and **THOMAS A. BERKENKAMP** and **MARK SCHAEVITZ** (collectively, "**BRG Guarantor**" and together with the BRG Member, the "**BRG Parties**"). The Albanese Parties and BRG Parties are sometimes referred to individually as a "**Party**" or collectively as the "**Parties**".

RECITALS

A. Albanese Member and BRG Member are members of BRG Harrison Lofts Urban Renewal, LLC, a New Jersey limited liability company (the "**Company**"), each owning the percentage membership interests in the Company as set forth in the amended and restated operating agreement of the Company dated June __, 2015 (the "**Operating Agreement**") between Albanese Member and BRG Member (capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings ascribed thereto in the Operating Agreement).

B. On or about the date hereof, _____ ("**Lender**") is making a loan in the principal amount of $ _____ to the Company or its subsidiary for the [development]/[refinancing of certain existing indebtedness] of the Project (the "**Loan**").

C. As a condition to making the Loan, Lender has required that Albanese Guarantor and BRG Guarantor execute and deliver, jointly and severally, a [Nonrecourse Carveout Guaranty] of even date herewith (the "**Nonrecourse Carveout Guaranty**") [and one or more other guaranty and/or indemnity agreements] (collectively referred to as the "**Guaranties**" and the obligations of the Parties under the Guaranties, together with all legal costs, interest and all other similar costs payable under, or are attributable to, the Guaranties, are collectively referred to as the "**Guaranteed Obligations**").[1]

D. Notwithstanding the joint and several nature of the Guaranties, the Parties have agreed between themselves pursuant to Section 5.6 of the Operating Agreement that each is only obligated to guarantee an amount equal to the product of such Party's Additional Contribution Ratio (as defined in the Operating Agreement) (i.e., the Albanese Parties' share shall be 66.67% and the BRG Parties' share shall be 33.33%) multiplied by the Guaranteed Obligations (such product, as to each Party, being referred to as the "**Pro Rata Share**").

E. In the event that a Party pays in excess of its Pro-Rata Share under any of the Guaranties, such Party is entitled to contribution and indemnification from the other Party to the extent of such excess, all in accordance with the terms and provisions of this Agreement.

[1] Note: To be updated to reflect actual guaranties and/or indemnities.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. Covered Losses and Non-Covered Losses. The Albanese Parties and BRG Parties hereby agree that all amounts paid or payable with respect to the Guaranteed Obligations (collectively, "**Lender Guaranty Payments**"), shall be borne as follows:

(a) Except as provided in subparagraph (b) of this Section 1, if and to the extent a Party makes Lender Guaranty Payments (the "**Paying Party**"), and regardless of whether such Lender Guaranty Payments are made voluntarily, by operation of law, pursuant to a settlement agreement or court order or otherwise, in an amount in excess its Pro Rata Share (such excess being hereinafter referred to as the "**Covered Losses**"), the other Party (the "**Indemnifying Party**") hereby irrevocably agrees that it shall be liable for, does hereby indemnify and hold harmless the Paying Party from and against, and shall pay to the Paying Party promptly upon demand, all Covered Losses.

(b) For the avoidance of doubt, a Party (the "**Non-Responsible Party**") shall not be responsible for Non-Covered Losses (hereinafter defined), and the Party (the "**Responsible Party**") whose acts or omissions resulted in any Non-Covered Losses shall be solely responsible for any and all such Non-Covered Losses and shall indemnify and hold harmless the Non-Responsible Party from and against the payment of any such Non-Covered Losses.

(c) The term "**Non-Covered Losses**" means amounts owed to a Lender by the Parties as the result of any act or omission taken or suffered by a Responsible Party (or a Person Affiliated with a Responsible Party) that results in any liability under a Nonrecourse Carveout Guaranty to the Lender, which amounts would not otherwise be owing to the Lender under the Guaranties, excluding, however, amounts owing to a Lender that result from any act or omission taken or suffered by a Responsible Party (or a Person Affiliated with a Responsible Party) (i) with the written consent of the Non-Responsible Party or (ii) by reason of lack of funds by the Company, as long as the Responsible Party (or a Person Affiliated with the Responsible Party) was not otherwise obligated to provide such funds to the Company.

2. Procedure.

(a) If a Paying Party becomes entitled to contribution and indemnification under Section 1(a), it shall send notice thereof, together with evidence of the payment made for which the Paying Party seeks such contribution and indemnification, to the Indemnifying Party which shall remit payment to the Paying Party of all Covered Losses within 15 days after receipt of such notice. If the Indemnifying Party fails to satisfy its obligations under this Section 2(a) within such 15-day period, the Paying Party may pursue all rights and remedies available to it under this Agreement, at law or in equity.

(b) If a Non-Responsible Party becomes entitled to indemnification under Section 1(b), it shall send notice thereof, together with evidence of the payment made for which

the Non-Responsible Party seeks such indemnification, to the Responsible Party which shall remit payment to the Non-Responsible Party within 15 days after receipt of such notice for the amount of all Non-Covered Losses paid by the Non-Responsible Party for which the Responsible Party is solely responsible under Section 1(b). If the Responsible Party fails to satisfy its obligations under this Section 2(b) within such 15-day period, the Non-Responsible Party may pursue all rights and remedies available to it under this Agreement, at law or in equity, and the Responsible Party shall also pay to the Non-Responsible Party interest on all such Non-Covered Losses paid by the Non-Responsible Party at the rate of eighteen percent (18%) per annum, but not to exceed the maximum rate permitted by law, from the date of such payment by the Non-Responsible Party to the date the Responsible Party satisfies its obligations under this Section 2(b).

3. Guaranty Loans. If any Party pays any Lender Guaranty Payments pursuant to Section 1(a) (less any amount reimbursed to such Party pursuant to Section 1(a)), including any Indemnifying Party paying Covered Losses to a Paying Party, the amounts paid by such Party shall constitute a Guaranty Loan pursuant to the provisions of Section 5.6(d) of the Operating Agreement, which provisions are incorporated herein by reference.

4. Right of Subrogation. This Agreement is not intended to interfere with or impair any statutory, contractual or common law right that a Party may have to be subrogated to the Lender's rights under the loan documents for the Loan in the event of a payment under the Guaranties.

5. Joint and Several Liability. The obligations and liabilities of each of the Albanese Parties hereunder are joint and several with each of the other Albanese Parties, and the obligations and liabilities of each of the BRG Parties hereunder are joint and several with each of the other BRG Parties.

6. Term. This Agreement shall remain in effect until the date on which the Parties have no further liability under the Guaranties and all obligations of any Indemnifying Party and any Responsible Party hereunder have been satisfied.

7. Notices. All notices under this Agreement sent to (i) the Albanese Parties shall be sent to the Albanese Member or (ii) the BRG Parties shall be sent to the BRG Member, at the address set forth in the Operating Agreement for the Albanese Member or the BRG Member, as applicable, by hand delivery, reputable overnight courier providing a receipt against delivery or registered or certified mail, return receipt requested, and shall be effective upon receipt or, if delivery is refused, upon the date on which delivery is refused.

8. Binding Nature. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns or heirs and legal representatives.

9. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire understanding of the Parties, and supersedes all prior agreements, with respect to the subject matter hereof. This Agreement may not be amended except by a writing signed by the Parties.

No waiver of any of the terms and conditions of this Agreement shall be deemed to have occurred or be effective unless such waiver is in a writing signed by the party sought to be charged therewith, and any such waiver shall only be effective for the specific instance described in such writing.

10. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to its conflicts of law principles. Any suit involving any dispute or matter arising under this Agreement may only be brought in the New Jersey Superior Court located in the County of Hudson or the United States District Court for the District of New Jersey located in Newark, New Jersey, or for the Southern District of New York located in New York, New York, whichever court has jurisdiction over the subject matter of the dispute or matter. Each Party irrevocably consents to the jurisdiction of such courts and waives any defense to such jurisdiction, including a defense based upon the actual or alleged inconvenience of such forum. Each Party hereby waives (i) personal service of process and agrees that a summons and compliant commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered or certified mail or by reputable overnight courier providing a receipt against delivery to such Party at the address herein provided for notices to such Party, or as otherwise provided by the laws of the State of New Jersey or the United States, as applicable, and (ii) THE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PROJECT, IT BEING AGREED THAT ANY SUCH MATTER SHALL BE TRIED BY A COURT WITHOUT A JURY.

11. Attorneys' Fees and Costs. In the event a Party institutes a legal action to enforce its rights under this Agreement, the Party determined to be the prevailing party in such action shall also be entitled to an award of, and the non-prevailing party shall pay upon demand, all reasonable legal fees and costs incurred by the prevailing party in such action.

12. Construction. Each Party acknowledges that it and its counsel have had an opportunity to review and make changes to this Agreement and the normal rule of construction, to the effect that ambiguities are construed against the drafting party, shall be inapplicable to this Agreement and the interpretation hereof.

13. Counterparts; Facsimiles. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The parties agree to recognize facsimile versions of executed signature pages of this Agreement as having the same force and effect as originally executed signature pages until such time as all parties have received executed originals of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

ALBANESE PARTIES:

ALBANESE HARRISON LOFTS LLC

By:_____
Name:
Title:

_____
Russell C. Albanese, Individually

_____
Christopher V. Albanese, Individually

BRG PARTIES:

BRG LAMPWORKS VENTURES, LLC

By:_____
Name:
Title:

_____
Thomas A. Berkenkamp, Individually

_____
Mark Schaevitz, Individually

EXHIBIT G

LIABILITIES OF THE COMPANY AS OF THE EFFECTIVE DATE

Payables:

Contractual Liabilities:

EXHIBIT G - ACCOUNTS PAYABLE

Vendor	Amount			Invoice #	Invoice Date	Comments
BILLED BUT NOT YET PAID						
Minno Wasko			6,320.40	26766	5/1/2015	Continued Design Development redesign efforts on project on T&M basis - $35K cap
Total - Billed Not Yet Paid			6,320.40			
BILLED BUT VENDOR NOT DUE FOR PAYMENT						
Minno Wasko	37,370.00			12-0664-01	12/1/2014	Payable upon 100% completion of DD's and 12% completion of CD's which has not yet occurred
	38,800.00			26223	1/31/2015	Payable upon 50% complete MEP drawings which has not yet occurred
		76,170.00				
Total - Billed but Vendor Not Due for Payment			76,170.00			
ANTICIPATED TO BE INVOICED (note all shown are ESTIMATES)						
Wolff Samson	20,000.00					Legal work post 5/1/15 regarding ADC operating agreement, VIP litigation & acquisition closing
Akin Gump	2,500.00					Legal work re tax allocation language on development fees contributed as capital
Minno Wasko	20,000.00					Continued Design Development redesign efforts on project on T&M basis - $35K cap
HNQT	5,000.00					2015 accounting work: $2.3MM cap inreconciliation, stub period tax return
Town of Harrison Professionals (M&T, Heyer Gruel Castano Quigley)	5,000.00					Work on behalf of Town re site plan approval for 320 units. To be paid from escrows previously funded
M & T Bank	5,000.00					Amount in excess of $15,000 for legal documentation on acquisition/bridge loan
Total - Anticipated to be Billed			57,500.00			

EXHIBIT H

COLLATERAL DESCRIPTION TO UCC-1 FINANCING STATEMENT

The Debtor's Economic Interest (as defined below) in BRG Harrison Lofts Urban Renewal, LLC, a New Jersey limited liability company (the "Company"), as described in that certain Amended and Restated Operating Agreement of the Company dated June 8, 2015, as the same may be amended from time to time (the "Operating Agreement"), together with all proceeds of the foregoing.

For purposes of this financing statement, the term "Economic Interest" means all economic rights of the Debtor in the Company, including but not limited to, the rights to distributions from cash flow and upon a disposition of assets of the Company, all as more particularly described in the definition of "Economic Interest" in Exhibit A to the Operating Agreement.

EXHIBIT I

ILLUSTRATIONS OF DILUTION CALCULATIONS

Section 3.1(d)(Non-Punitive Dilution Methodology):

Assume the BRG Member fully funds its Initial Capital Contribution of $2,336,667 (and is given credit for its Enhanced Value Contribution of $2,330,000), and the Albanese Member only funds $6,222,222 of its Initial Capital Contribution of $9,333,333, then the Non-Punitive Dilution Methodology would work as follows, utilizing the Relative Percentages Formula:

2 x (4,666,667/6,222,222) = 1.50, which means that the BRG Member's Percentage should be 1.5 times the Albanese Member's Percentage.

If the Albanese Member's Percentage is represented as "x", then the BRG Member's Percentage would be 1.5x, and together the two Percentages should total 1.0, as follows:

$$1.5x + 1x = 1.0$$
$$2.5x = 1.0$$
$$x = 0.40$$

Therefore, the Albanese Member's Percentage would equal 40%, and the BRG Member's Percentage would equal 60%.

Section 3.3(b)(ii) (Punitive Dilution Methodology):

Assume the following:

- **Step 1**: Both Members fund their Initial Capital Contributions in full (and the BRG Member is given credit for its Enhanced Value Contribution), so the BRG Member's Capital Contributions total $4,666,667 and the Albanese Member's Capital Contributions total $9,333,333.
- **Step 2**: There is a call prior to the Stabilization Date for $3 million in Required Additional Capital Contributions, $1 million to be funded by the BRG Member and $2 million by the Albanese Member. The BRG Member is deemed to satisfy its obligation to fund by waiving $1 million in Development Fees. The Albanese Member makes its $2 million in Required Additional Capital Contributions. The BRG Member's Capital Contributions now total $5,666,667 and the Albanese Member's Capital Contributions now total $11,333,333.
- **Step 3**: There is a call prior to the Stabilization Date for an additional $3 million in Required Additional Capital Contributions, $1 million to be funded by the BRG Member and $2 million by the Albanese Member. The BRG Member fails to fund the $1 million for which it is obligated, and the Albanese Member funds its $2 million plus the $1 million that the BRG Member was required, but neglected, to fund. The BRG Member's total Capital Contributions would be reduced by $1 million because of a Shifting of Capital, and the Albanese Member's Capital Contributions would be increased by $4 million, $3 million for the Additional Capital Contribution that it made and $1 million more because of the Shifting of Capital. Therefore, the BRG Member's total Capital Contributions would decrease to $4,666,667, and the Albanese Member's total Capital Contributions would increase to $15,333,333.

Based upon the Relative Percentages Formula, the Percentages would be recalculated as follows:

2 x (4,666,667/15,333,333) = 0.6087, which means that the BRG Member's Percentage should be 0.6087 times the Albanese Member's Percentage.

If the Albanese Member's Percentage is represented as "x", then the BRG Member's Percentage would be 0.6087x, and together the two Percentages should total 1.0, as follows:

$$0.6087x + 1x = 1.0$$
$$1.6087x = 1.0$$
$$x = 0.6216$$

Therefore, (i) the Albanese Member's Percentage would equal 62.16% and the BRG Member's Percentage would equal 37.84%, (ii) the Albanese Member's Undistributed Required Additional Capital would equal $6 million and the BRG Member's Undistributed Required Additional Capital would equal $0, and (iii) the Albanese Member's Undistributed Initial Capital would equal $9,333,333 and the BRG Member's Undistributed Initial Capital would equal $4,666,667.

Section 3.3(b)(iii) (Non-Punitive Dilution Methodology):

Assume the following:

- **Step 1**: Same facts as in Step 1 of the example for Section 3.3(b)(ii) (Punitive Dilution Methodology).
- **Step 2**: Same facts as in Step 2 of the example for Section 3.3(b)(ii) (Punitive Dilution Methodology).
- **Step 3**: There is a call after the Stabilization Date for $3 million in Discretionary Additional Capital Contributions, $1 million to be funded by the BRG Member and $2 million by the Albanese Member. The BRG Member fails to fund the $1 million, and the Albanese Member funds its $2 million plus the $1 million that the BRG Member neglected to fund. The Albanese Member's Capital Contributions would be increased by $3 million. Therefore, the BRG Member's total Capital Contributions would remain at $5,666,667, and the Albanese Member's total Capital Contributions would increase to $14,333,333.

Based upon the Relative Percentages Formula, the Percentages would be recalculated as follows:

2 x (5,666,667/14,333,333) = 0.7907, which means that the BRG Member's Percentage should be 0.7907 times the Albanese Member's Percentage.

If the Albanese Member's Percentage is represented as "x", then the BRG Member's Percentage would be 0.7907x, and together the two Percentages should total 1.0, as follows:

$$0.7907x + 1x = 1.0$$
$$1.7907x = 1.0$$
$$x = 0.5584$$

Therefore, the Albanese Member's Percentage would equal 55.84% and the BRG Member's Percentage would equal 44.16%.